CLERK'S COPY.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 140.

W. A. WALKER, EXECUTOR OF THE ESTATE OF W. H. ANSLEY, DECEASED, APPELLANT,

vs.

J. W. McLOUD, TRUSTEE, AND FRANCIS I. GOWEN, RECEIVER OF THE CHOCTAW COAL AND RAILWAY COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED OCTOBER 28, 1905.

(19,948.)

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a Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the May Term, 1905, of said Court, begun and held at the United States Court House in the City of St. Paul, Minnesota, on the first Monday in May, to-wit: the first day of May, A. D. 1905, before the Honorable Willis Van Devanter and the Honorable William C. Hook, Circuit Judges, and the Honorable Elmer B. Adams, District Judge.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered, that heretofore, to-wit: on the twenty-sixth day of December, A. D. 1904, a transcript of record, pursuant to an appeal allowed by the United States Court of Appeals in the Indian Territory, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein W. H. Ansley was Appellant, and J. W. McLoud, Trustee, and Francis I. Gowan, Receiver of the Choctaw Coal and Railway Company, were Appellees, which said transcript of record is in the words and figures following, to-wit:

b The United States of America to J. W. McLoud, Trustee, and Francis I. Gowan, Receiver of the Choctaw Coal and Railway Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this Citation bears date, pursuant to an order of appeal, filed in the Clerk's office of the United States Court of Appeals in the Indian Territory, wherein W. H. Ansley is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the appellant, as in said order of appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Joseph J. Gill, Associate Justice of the United States Court of Appeals in the Indian Territory, this 3" day of December, in the year of our Lord one thousand nine hundred and four (1904).

JOSEPH A. GILL,
Associate Justice of the United States Court of Appeals in the Indian Territory.

I hereby accept service, of the [withen] citation, this December 10th, 1904.

C. B. STUART,
Attorney for Appellees.

No. — United States Circuit Court of Appeals. Eighth Circuit. W. H. Ansley, Appellant, *vs.* J. W. McLoud, Trustee, *et al.*, Appellees. Citation on Order of Appeal.

UNITED STATES OF AMERICA, *Indian Territory:*

In the Court of Appeals, *Set.*

Pleas and Proceedings in the United States Court of Appeals in the Indian Territory, at a term begun and held at the Court House in the City of South McAlester, Indian Territory, on the 17th day of October, A. D. 1904.

Present and presiding:
Hon. Charles W. Raymond, Chief Justice,
Hon. Wm. H. H. Clayton, Associate Justice,
Hon. Hosea Townsend, Associate Justice,
Hon. Joseph A. Gill, Associate Justice,
George K. Pritchard, U. S. Marshal, and
Wm. P. Freeman, Clerk.

c W. H. ANSLEY, Appellant,
vs.
J. W. MCLOUD ET AL., Appellees.

Be it Remembered, That heretofore, to-wit: on the 25th day of August, A. D. 1902, there was filed in the office of the Clerk of the United States Court of Appeals in the Indian Territory, at South McAlester, a transcript of the record and proceedings of the United States Court of the Central District of the Indian Territory, sitting at South McAlester, in the above entitled cause, which is in the words and figures following, to-wit:

1 UNITED STATES OF AMERICA, *Indian Territory, Central District:*

Pleas before the United States Court for the Central District of the Indian Territory, at South McAlester, in a cause therein pending, numbered 1622, wherein W. H. Ansley is plaintiff and J. W. McLoud, trustee, and Francis I. Gowen, receiver, are defendants.

Complaint in Equity.

In the United States Court in the Indian Territory, Central District, South McAlester.

W. H. ANSLEY, Plaintiff,
vs.
J. W. MCLOUD, Trustee, and FRANCIS I. GOWEN, Receiver, Defendants.

Complaint in Equity.

To the Hon. Yancey Lewis, Judge:

W. H. Ansley, plaintiff, complaining of J. W. McLoud, trustee, and Francis I. Gowen, receiver, defendants, represents that plain-

tiff is a Choctaw Indian by blood, and resides at McAlester, in the Indian Territory, and that the defendants are citizens of the United States, said McLoud residing at South McAlester, in the Indian Territory, and said Gowen residing at Philadelphia, in the State of Pennsylvania; and said plaintiff further represents:

I.

The Choctaw Coal & Railway Company is a corporation organized under the laws of the State of Minnesota, and by act of Congress, approved February 18, 1888, is authorized to do business in the Indian Territory. On the 19th day of September, 1890, on petition of Langhorne Wister, this honorable court appointed receivers of said company, who failed to qualify, and on the 8th day of January, 1891, upon petition of Langhorne Wister and Girard Life Insurance, Annuity and Trust Co., of Philadelphia, as trustee, this
2 honorable court appointed the defendant, Francis I. Gowen, and one Edwin D. Chadick, as receivers of said company, and all of the rights, property and franchises of said company were thereby vested in them as receivers. On August 28, 1891, the defendant, Gowen, was made acting receiver of said company, and the said Edwin D. Chadick remained as co-receiver with him, but was not engaged in the active management of the railway of said company, but having other and different duties assigned to him in connection with said receivership until the 14th day of June, 1893, when the said Chadick resigned his position as receiver, and one Jas. W. Throckmorton was appointed in his stead. That thereafter the said Throckmorton departed this life, and by order of this honorable court, said Gowen was retained as sole receiver of the affairs of the said company, which position he now holds.

II.

One Fritz Sittel was a white man, residing in the Indian Territory, and he, in or about the year 1885, intermarried with one Malvina Pitchlynn, a Choctaw Indian by blood, and thereby, under the laws and customs of the Choctaw Nation, became an intermarried citizen of the Choctaw Nation, and he and the said Malvina Sittel, from or about the year 1885 up to about the year 1891, occupied as their homestead farm the tract of land in Tobucksey County, Choctaw Nation, the same being the tract of land upon which the town of South McAlester is now situated, and which was and is a part of the common domain of the Choctaw Nation of Indians. Said Fritz and Malvina Sittel had, before entering upon the land aforesaid, purchased the Indian title thereto, together with the improvements thereon, from one — a Choctaw Indian by blood, who had taken the same up as his claim and improved the same under the laws and customs of the Choctaw Nation and held and owned the exclusive right to the possession thereof so long as the same should be held by him and his vendees in accordance with the laws of the Choctaw Nation. In the year 1890, said Fritz and Malvina Sittel platted said land, or a large portion thereof, the same being the plat of the

town of South McAlester; and upon said plat designated the streets, lots and blocks, as now appearing in the town of South McAlester, and caused said plat to be struck off in public maps and the same to be distributed in and about the town of South McAlester.

3 That upon said plat the premises hereinafter spoken of and the right of possession of which, and the title to the improvements thereon are in controversy in this suit, are designated and described as follows, viz:

SCHEDULE A.

Lots No. 23, 24, 25 & 26, in block 48, and the building thereon situated, known as the "Kali Inla" hote' building.

Lot No. 3, in block 46, and the house thereon situated, known as the H. G. Knapp residence, and also known as house No. 10.

Lot No. 8, in block 46, and the improvements thereon situated, known as the J. M. Zike residence, and also known as house No. 6.

Lot No. 2, in block No. 46, and the improvements thereon situated, known as the Mr. Huff, residence, and also known as house No. 11.

Lots No. 4 & 5, in block No. 46, and the improvements thereon situated, known as the J. F. Holden residences, and also known as house No. 7 and house No. 9.

(All of the aforesaid property was, by the sheriff of Tobucksey county, Choctaw Nation, on the 24th day of June, 1895, sold under the laws of the Choctaw Nation, and struck off to plaintiff, who was the highest and best bidder therefor.)

SCHEDULE B.

Also the following: Lot No. 12, in block No. 46, and the improvements thereon situated, known as the H. Hollar residence.

Lot No. 1, in block 46, and the improvements thereon situated, known as the Mr. Stuart residence, also as house No. 8.

(Said property was on the 24th day of June, 1895, under and by virtue of the laws of the Choctaw Nation, sold by the sheriff of Tobucksey county, to Jas. Pusley, a Choctaw Indian by blood; he being the highest and best bidder therefor, and he having since that time deeded the same to plaintiff.)

SCHEDULE C.

Also the following: Lot No. 9, in block 46, and the improvements thereon situated, known as the J. D. Bradford house, also known as house No. 1.

Lot No. 7, in block 46, and the improvements thereon situated, known as the O. W. Argo residence, also known as house No. 5.

(Said property was on the 24th day of June, 1895, under and by virtue of the laws of the Choctaw Nation, sold by the

4 sheriff of Tobucksey county, to E. T. Richards, a Choctaw citizen by marriage, who was the highest and best bidder

for same, and who has since said date conveyed the same to plaintiff.)

All of said lands and improvements being situated in the Choctaw Nation, Tobucksey county, and a part of the town of South McAlester.

That said Fritz and Malvina Sittel were then and there in the exclusive and adverse possession of all of said land and of the lots into which the same was divided as aforesaid, and entitled to the exclusive and adverse possession thereof; but under and by virtue of the agreement hereinafter set forth in the nature of a trust deed to one Edwin D. Chadick, they pretendedly erected, or caused to be erected the buildings and improvements upon said lots hereinbefore specified for the purpose of renting the same, and really and in truth with the intent and purpose that the houses when so erected should be erected by money furnished by him, the said Chadick, either belonging to him, or some of his associates, and that said houses, when so erected, should a'tually belong to and be the property of him, the said Chadick, and his associates, or some of them, and have been used by them for the purpose of renting, and has rented them for a long time. That said Chadick and his associates were then and there white men, citizens of the United States, and non citizens of the Choctaw Nation. That said agreement was entered into on the part of said Fritz and Malvina Sittel, and the said Edwin D. Chadick, for himself and others, was put in the form of the deed of trust hereinafter described and set forth, which, upon its face, purports to leave the title to said property in said Fritz and Malvina Sittel, but which in truth and in fact was intended to vest, and did vest, the entire and complete control, possession and ownership of said improvements in the said Chadick, trustee, and his associates. That said agreement and trust deed were all contrary to the laws of the Choctaw Nation and of the United States and to treaty stipulations, and was made for the purpose, then and there known to all of the parties thereto, to evade the laws of the Choctaw Nation and of the United States, and to enable non citizens not under the employ of any citizen of the Choctaw Nation, nor in said Territory under any permit from said Nation, to actually own, possess and control improvements upon land in the Choctaw Nation.

On October 30, 1888, there was approved by the Governor
5 of the Choctaw Nation a law previously passed by the Legislature thereof, which has ever since remained the law of said Nation, in words and figures as follows, to-wit: entitled, "Claims and Improvements, Sec. 3, "Non Citizen Improvement."

"(1) Be it enacted by the general council of the Choctaw Nation assembled: All non-citizens not in the employ of a citizen of the Choctaw Nation, and not authorized to live in the Choctaw Nation under the provisions of existing treaty stipulations, who have made or bought improvements in said Nation are hereby notified that they are allowed to sell their so-called improvements to citizens, and if such non-citizens fail to comply with this section, then it shall be the duty of the sheriffs of the counties in which such improvements may be located to advertise the same for sale in thirty days; and sell

the same at the appointed time to the highest Choctaw citizen bidder for cash; one half of which shall be paid into their respective treasuries, and the other half into the National Treasury, provided, however, that if any such non-citizen fail or refuse to deliver the possession of such an improvement, he shall be reported by the sheriff of that county to the Principal Chief, and by said chief to the United States Indian Agent, to take proper steps for the removal and prosecution of such offender under section 2118 of the Revised Statutes of the United States. Provided further, that a notice of sale shall be posted by the sheriff in three public places in the county, which shall be legal notice to all persons against whom this law may operate."

Said Choctaw Coal & Ry. Co., to the time it was placed in the hands — as aforesaid, and since then, the receiver thereof, have advance- the money for the erection of and caused the erection of the improvements hereinbefore described upon the lands described.

Plaintiff alleges that neither said Chadick, nor any of his said associates had any right or authority under any law of the U. S. or of the Choctaw Nation, to erect improvements in the Choctaw Nation upon the lands of said Nation, but were expressly denied any such right or authority by the treaties between the U. S. and said Choctaw Nation, but notwithstanding, the said Chadick and his associates, without any right or authority whatever, conspired with the said Fritz and Malvina Sittel to build a town in said Choctaw Nation at the point where South McAlester now stands,
6 to be occupied, owned and controlled by white men, citizens of the United States, and non-citizens of the Choctaw Nation, all of the same being persons not under the employ of any citizen of the Choctaw Nation and not authorized to live in the Choctaw Nation under the provisions of any existing treaty or law of the United States and if authorized to live therein, merely so authorized for some specific limited purpose, not entitling them to own improvements therein; and in pursuance of such purpose said deed of trust was executed, as is hereinafter set forth, and said Chadick, for and in behalf of himself and associates, advanced the money necessary for the construction of the improvements situated upon the lands heretofore specified as schedules A, B & C, and said improvements were so constructed, either by him or some of his successors and associates, long after the passage and approval of the act of the C.—— Indian Nation aforesaid, and in defiance thereof, for the purpose of renting, leasing and letting such improvements, together with the land upon which the same are situated, to non citizens of the Choctaw Nation, and for the purpose of so controlling the lands of the Choctaw tribe of Indians. That said Chadick in truth and in fact had but one associate in and about the enterprise aforesaid in the beginning thereof, viz: The Choctaw Coal & Ry. Co. That said company, by and through its agent and general manager, E. D. Chadick, aforesaid, who at the time of the execution of said pretended deed in trust, was the agent and general manager of said Co., was in full charge of the construction thereof, and in full charge and control of all its property rights

in the Indian Territory, and especially in and about the town of South McAlester. That after said Co. went into hands of Receivers, as aforesaid, said defendant, Gowen, as receiver associated himself with said Chadwick in said pretended deed of trust, and together with said Chadick, acting jointly as receivers of Co., caused some of the most expensive improvements to be erected upon the lands aforesaid, to-wit, the building known as the Kali Inla hotel, and others that plaintiff is unable to specify. That at all of said times the defendant, J. W. McLoud, was acting as attorney for said Ry. Co., or for said receivers, and participated in the advance of the money of said Ry. Co. for the purpose of erecting the improvements aforesaid and participated in procuring them to be erected and advised, aided and abetted therein, and subsequently, as is hereinafter set forth, procured the removal of said Chadick as
7 trustee in said fraudulent deed and had himself substituted therein as trustee. On October 14, 1890, there was approved by the Governor of the Choctaw Nation a law previously passed by the general council thereof, in words and figures as follows, viz:

"No. 54. Whereas, a corporation, known as the Choctaw Coal and Railway Company, incorporated under the laws of the state of Minnesota, and chartered by the Congress of the United States to establish a certain line of railway through the Choctaw Nation with branch roads. And,

Whereas, by the terms of their charter they are allowed a branch road in a westerly direction to their coal fields in Tobucksy county. And,

Whereas, they are building numerous branches or switches, and are contemplating the building of a road in a southerly direction from or near Hartshorne, a station on said branch road, to Denison or Bonham, Texas. And,

Whereas, certain officials of said Choctaw Coal and Railway Company are said to be engaged in speculating in town sites under illegal leases from Choctaw citizens, and are erecting houses, offices, etc., on said leased lands, and are renting them. And,

Whereas, said leases of land are in direct violation of law. And,

Whereas, no contract is recognized for coal or stone for a longer period than six years. And,

Whereas, certain citizens have leased said coal for a term of years (viz, 30) not recognized by law.

SEC. 1. Therefore, be it enacted by the General Council of the Choctaw Nation assembled, That the Choctaw Council hereby enters a protest against the building of said branch road from Hartshorne, south.

SEC. 2. Be it further enacted, that the National Agent is hereby instructed to demand of the officials of the Choctaw Coal and Railway Company that they file, within sixty days, evidence that they are not connected, directly or indirectly, with the town site syndicates; also a copy shall be filed with the Principal Chief. If they fail to file such evidence, the National Agent shall declare their coal leases null and void and so notify them.

SEC. 3. Be it further enacted, That the leases for thirty years are hereby declared to be illegal and null and void.

SEC. 4. Be it further enacted, That the Sheriff of each county is hereby instructed to at once diligently inquire into all
8 such illegal leases and report the same to the Principal Chief, and that he cause any improvement erected by non citizens, corporate or individual, by virtue of said illegal leases, to be advertised by sale in the manner provided by law.

SEC. 5. Be it further enacted, That the Principal Chief is hereby authorized to employ competent counsel to represent the interests of the Nation before the United States courts, and the sum of $2,000 is hereby appropriated out of any money in the Treasury not otherwise appropriated, for the payment of said attorneys. Said amount to be drawn by the Principal Chief on his own certificate and disbursed as to him seems best, and the remainder, if any, to be paid into *to* National Treasury. All records in such cases to be filed in the office of the National Secretary.

SEC. 6. Be it further enacted, That a copy of this act be forwarded to the President and Treasurer of said Choctaw Coal and Railway Company by the National Secretary, and that this act shall take effect and be in force from and after its passage.

Approved Nov. 14, 1890.

W. N. JONES,
P. C. C. N."

A copy of said act was forthwith served upon the officials of said Ry. Co., and they had full notice thereof, as well as of the other public acts of the Choctaw Council. At the time of the passage of above act and the service of copies thereof upon said R. Co., it had not made any of the improvements herein set forth, but thereafter proceeded to make and erect the same, and to furnish money for that purpose with full knowledge of all the facts and with full knowledge that it had no right so to do, and that it would be resisted in its control of the improvements so erected.

III.

Heretofore, to-wit, on the 23rd day of October, 1890, Fritz and Malvina Sittel executed and delivered to Edwin D. Chadick, a certain instrument in writing, designated as a deed in trust, a copy of which is hereto attached and marked Exhibit A, and made a part of this petition. The original of such instrument is in the possession of said Francis I. Gowen, receiver, and J. W. McLoud, trustee, and they are notified to produce the same upon the trial of this cause, or secondary evidence will be resorted to, to prove the contents thereof. That said instrument purports to be
9 a deed of trust in the nature of a mortgage upon certain property of Fritz and Malvina Sittel, in the town of South McAlester, in the Indian Territory, and among others the aforesaid, to said Chadick, as trustee for the pretended purpose of securing a loan of $45,000.00 therein alleged to have been advanced,

and to be advanced by Charles Hartshorne and Wm. C. Alderson, of Philadelphia, Pa., and their associates, for the purpose of creating and furnishing houses and improvements upon the lands of said Fritz and Malvina Sittel aforesaid in the town of South McAlester, and by said instrument the legal title in and to the improvements and lands is attempted to be conveyed to said Chadick, as trustee, for the purpose of securing the beneficiaries aforesaid. Thereafter on the 4th day of October, 1895, by a certain judgment entered by this Honorable Court, in a certain cause numbered on the docket of this court 969, entitled Edwin D. Chadick, Trustee, *vs.* Francis I. Gowen and Jas. W. Throckmorton, Receivers, *et al.*, it was decreed by the court that the said Choctaw Coal & Railway Company had advanced for the construction and erection of the buildings in South McAlester upon the lands aforesaid, and among them those heretofore described, the sum of $53,220.96, and that said J. W. McLoud was substituted as trustee in said instrument in place of Edwin D. Chadick, and was the legal and proper trustee therein for the said Choctaw Coal & Railway Company. That said decree is hereto attached marked Exhibit B, and made a part hereof. That in said proceeding, said Alderson and Hartshorne under oath stated that they had not advanced any portion of the money attempted to be secured in said deed of trust, nor was the same advanced by any of their associates, but that they were in ignorance of the existence of said deed of trust, constituting a pretended security to them until long after its execution, and until long after the erection of the buildings aforesaid and the investment of whatever sums of money the same purported to secure, all of which plaintiff alleges to be true. Said Edwin D. Chadick, J. W. McLoud, Francis I. Gowen and James W. Throckmorton, Receivers, were parties to the said proceeding, and appeared and plead therein, and were parties to the judgment and decree, and in all things bound thereby, whereby it was settled as between the parties thereto that the said Choctaw Coal & Railway Company was the sole beneficiary in said deed of trust. That said J. W. McLoud was, from that time, substituted trustee therein. That said Edwin D. Chadick was then and there removed as trustee therein, and the said Hartshorne and Alderson and their associates had advanced no portion or part of the sums of money invested in the houses, buildings, etc., upon the Indian lands aforesaid in and about the town of South McAlester.

Said J. W. McLoud, under and by virtue of said trust deed and of the order of court aforesaid, has seized possession of and has been controlling and renting to non-citizens of the Choctaw Nation the houses and lands hereinbefore described, claiming to act as trustee for the Choctaw Coal & Ry. Co., but also claiming the legal title in and to said lands and improvements, or claiming legal title to the improvements with the right permanently to occupy the land upon which the same are situated, and was so claiming occupying, using, renting and controlling the same at all times in the year 1895, prior to the sale thereof by the Indian sheriff,

as is hereinafter set forth, contrary to the laws of the Choctaw Nation and of the U. States.

IV.

That said J. W. McLoud, trustee, defendant, under and by virtue of said pretended conveyance, is about to sell, and will, on Monday, December 30, 1895, sell at the front door of the post office in South McAlester, Indian Territory, the aforesaid property, except lot 12 in block 46, and the improvements thereon situated. That said property so advertised to be sold by said McLoud is of the reasonable value of sixty thousand dollars ($60,000.00), and the monthly rental therefrom is of the reasonable value of three hundred dollars ($300.00). That said McLoud, trustee, will as aforesaid, sell said property at said time, unless prevented from so doing by an order of this honorable court. Said McLoud, trustee, has published a notice, which is hereto attached, and marked Exhibit C, and made a part hereof, to the effect that in pursuance of the deed of trust executed by Fritz and Malvina Sittel, on the 23rd day of October, 1890, to Chas. Hartshorne and Wm. C. Alderson, and their associates, and in pursuance of an order from the United States Court for the Central District of the Indian Territory, of date October 4, 1895, he will sell, on Monday, December 30, 1895, the property aforesaid, and that he will, as trustee, give the purchaser a good and sufficient deed to said property, with
11 the usual warranties. Said notice of sale is false in this, that there was no order of court entered upon said fourth day of October, 1895, directing the said McLoud to sell the said property, and the said McLoud well knew at the time of the publication of the said notice that neither plaintiff nor the Choctaw Nation was a party to said proceeding and was not bound thereby. Under and by virtue of said deed of trust, the trustee therein named is only empowered to sell at the request of said Chas. Hartshorne and Wm. C. Alderson, or any of their associates the property therein described and the said notice does not allege that any such request has been made of such trustee. It is well known to said trustee, J. W. McLoud, and Francis I. Gowen, receiver, that the rights claimed by them under said deed of trust cannot be enforced against plaintiff in any court of law or equity, and they are now attempting to do by notice and sale outside of the doors of the court what they know and believe to be without warrant of law.

That said J. W. McLoud, as such trustee, has heretofore, without warrant of law, sold many pieces of land not described herein in South McAlester, and the improvements thereon situated to non-citizens of the Choctaw Nation, and put them in possession thereof. That he has heretofore bargained at private agreement some of the lots and houses hereinbefore described to non-citizens of the Choctaw Nation and put them in possession thereof, but that he now intends to resell the same property at public sale under some sort of a private understanding or agreement with such parties who claim to hold the same merely as agents of said J. W. McLoud, trustee. The names of such persons are unknown to plaintiff, and are not made parties

hereto because they claim no interest in the subject matter of this suit. The greater part, however, of the property hereinbefore described has never been bargained by said McLoud, but if he is allowed to proceed he will on the day aforesaid, sell the same in single pieces to the highest bidder, and attempt to convey the title to them and thus and by this means many claimants will arise to said lands and will thus ca-se many law suits and vexation and expense to plaintiff, which can be prevented by injunction.

V.

Heretofore, to-wit, on 1st day of Sept., 1893, in this honorable court, the said Choctaw Coal & Railway Company, by and through its receivers, Jas. W. Throckmorton and Francis I. Gowen,
12 brought their suit in ejectment against one J. T. Miller, for the possession of the property therein described, being the property in all respects similarly situated to the property hereinbefore described, covered by the same deed of trust and erected by the same means in part, and the improvements thereon, said suit being numbered on the docket of this court No. 959, and entitled Jas. W. Throckmorton and Francis I. Gowen, receivers, plaintiff-, *vs.* J. T. Miller. In said cause, No. 959, entitled Jas. W. Throckmorton and Francis I. Gowen, receivers, *vs.* J. T. Miller, the said company by and through its said receivers, set out its claim to said property in its complaint therein filed, subscribed and sworn to by the said J. W. McLoud, Trustee, in words and figures as follows, viz:

"That in the year 1889 the said Choctaw Coal & Railway Company advanced to said Chadick, who was then its General Manager in the Indian Territory, and who was also acting as the agent of one Fritz Sittel, the Indian occupant of the land upon which the buildings hereinafter described are situated, a certain sum of money, and said Chadick thereby became trustee for said company for the money so advanced, and as such trustee for said company, and as the agent of said Sittel, the said Chadick used about the sum of $915.00, which was afterwards increased by the sum of $315.00, making a total of $1230.00, in the erection of the houses, buildings and improvements now occupied by the defendant, J. T. Miller, on the land known as lot 13 in blk. 46, at South McAlester, Ind. Ter., which is a portion of the land that at the time said houses, buildings and improvements were erected, was claimed by said Sittel as the Indian occupant thereof, the said Fritz Sittel being a citizen of the Choctaw Nation and being the husband of a Choctaw Indian woman. That said house buildings and improvements were erected as aforesaid with the full knowledge and consent of the said Fritz Sittel and for his benefit, to the extent that they would enhance the value of the adjoining lots." Wherein and whereby it appears and plaintiff alleges the same to be true, that the said Choctaw Coal & Railway Company advanced the money with which the improvements upon the hereinbefore described property were erected, and that the same was voluntarily advanced by it, by and through its agent and general manager, Edwin D. Chadick, and was done for

the purpose of obtaining the occupancy of said land, to evade
13 the laws of the United States and of the Choctaw Nation, and that said money was advanced by said Choctaw Coal & Railway Company with its full knowledge and consent and for the purpose of building a town at South McAlester, Indian Territory off of its said right of way. Said property hereinbefore described is not a part of plaintiff's right of way, but about 400 feet north thereof. The Act of Congress of Feb. 18, 1888, granting to said company the right of way through the Indian Territory, in section 2, provides: "That said corporation is authorized to take and use for all purposes of railway and for no other purpose, a right of way of 100 feet in width through said Indian Territory for said main line and branch of the Choctaw Coal & Railway Co., and to take and use a strip of land 200 feet in width with the length of 3,000 feet in addition to the right of way for stations for every ten miles of road, with the right to use such additional ground where from heavy cuts and fills as may be necessary for the construction and maintenance of the road bed, not exceeding 100 feet in width on each side of said right of way, or so much thereof as may be included in said cut or fill; provided, no more of said addition of land than is needed for any one station; provided, no part of the lands herein authorized to be taken shall be leased or sold by the company, and they shall not be used for any purpose but the convenient operation of said road, telegraph and telephone lines, and when any part thereof shall cease to be used, such portion shall revert to the Nation or Tribe of Indians from which the same shall be taken."

Section 10 of said Act provides: "That the said Choctaw Coal and Railway Company shall accept this right of way upon the express condition, binding upon itself, its successors and assigns, that they will neither aid, advise nor assist in any efforts looking toward the changing or extinguishment of the present tenure of the Indians in their land, and will not attempt to secure from the Indians any further grant of land, or its occupancy, than is hereinbefore provided. Provided, that any violation of the condition mentioned in this section shall operate as a forfeiture of all the rights and privileges of said railway company under this act."

The contract alleged by said receivers, as aforesaid, and the advance of the money by them for the purposes aforesaid as is alleged by
14 them and for the purpose of making the other improvements herein before described, was not within the scope or purpose of the objects of the creation of the said Choctaw Coal & Railway Co., but was in direct contravention and in violation of the Acts of Congress aforesaid, whereby it was granted the right to be in the Indian Ter., and there operate its lines. That the effort of said company to extend its rights of occupancy upon the Indian lands is contrary to law and ought not to be enforced. That every act of said company with reference thereto was wholly *ultra vires* and in violation of the acts of Congress aforesaid, and in violation of the treaties entered into between the Government of the United States and the said Choctaw Nation, and of section 2118 of the Revised Statutes of the United States, and against public policy and null and void. The said substituted beneficiary, the Choctaw Coal

& Railway Company, in said deed of trust, is forbidden to take and hold any interest in the lands of the Choctaw Nation, other than those directly conferred in the act aforesaid. Plaintiff says that every claim made by said McLoud as trustee or by said Gowen as receiver of the said Choctaw Coal & Railway Company against the hereinbefore described property in controversy, or the improvements thereon, is directly against the law of the land, and against public policy, and should not be permitted.

VI.

Plaintiff further represents to the court that on and before the 1st day of May, 1895, and at all times since then the property hereinbefore described in section 2 of this bill, and specified as schedules A, B & C, have been claimed by said McLoud as trustee in said mortgage, and rented out to non-citizens of the Choctaw Nation and non citizens of the Indian Territory, in violation of sec. 2 of Bill XIV, page 268, Durant's Code of the Choctaw Laws, who were then and there citizens of the United States, who were not entitled to hold the same under any law of said Choctaw Nation or of the U. S., but were thereby forbidden from holding and occupying the same and who now assert no claim or title thereto.

That under and by virtue of the laws of the Choctaw Nation, set forth in section 2 of this bill, the Sheriff of Tobucksy County, acting by and through his deputy, Wm. Ansley, on the 24 day of May, 1895, caused said improvements, that is to say, the improvements situated on the lands hereinbefore described in schedules A, B & C, to be advertised for sale in thirty days thereafter, as is provided by law of the Choctaw Nation relating thereto, and in
15 pursuance with said notice, did, on the 24th day of June, 1895, at public outcry, sell the same to the highest bidders for cash; that your petitioner became the purchasar of that portion of the same specified in said section 2 as schedule A, and that one Jas. Pusley became the purchaser of that portion of said property alleged to have been purchased by him in section 2 of this bill and described therein as schedule B; and that one E. T. Richards became the purchaser of said property alleged to have been purchased by him in section 2 of this bill and described therein as schedule C. That since that time said Pusley and Richards, both of whom were citizens of the Choctaw Tribe of Indians, have sold their interest in said property to your petitioner who is now the exclusive owner of all of said property described in section 2 hereof. That on said day after said sale, Jonas Peabody, Sheriff of Tobucksey County, by and through his deputy, Wm. Ansley, executed and delivered to your petitioner, a deed to the property purchased by him, a copy of which is hereto attached and marked Exhibit D, and made a part hereof; and also a deed to the said Jas. Pusley to the property purchased by him, a copy of which deed is hereto attached, marked Exhibit E, and made a part hereof, and also a deed to said E. T. Richards, of the property purchased by him, a copy of which deed is hereto attached and marked Exhibit F, and made a part hereof, and thereafter the said Pusley and Richards

executed deeds to your petitioner in and to the same property, copies of which deeds are hereto attached, marked Exhibits G & H, and made parts hereof, wherein and whereby your petitioner acquired title in and to the lands aforesaid, and the improvements thereon. If he is mistaken in saying he acquired title to said lands, he then says he acquired title in and to the improvements aforesaid, and the right and title in and to the occupancy of the lands upon which said improvements are situated.

Your petitioner further says that said Fritz and Malvina Sittel have long since ceased to assert any claim or title or any authority or control whatever either in or to the aforesaid lands or the improvements thereon, and if they ever claimed to own the improvements thereon have long since abandoned their claim. Under the laws of the Choctaw Nation, all of which appertaining hereto plaintiff here refers to and prays the court to take judicial notice of and to
16 consider in connection herewith, said Fritz and Malvina Sittel, by reason of the premises, lost, relinquished and forfeited all right to the exclusive possession of said lands or the improvements thereon and the same became directly subject to the control of the authorities of the Choctaw Nation, and were so subject to their control at the time the same was advertised for sale by the Sheriff of Tobucksy Co., and plaintiff and his vendors became the purchasers thereof, as aforesaid.

VII.

The premises considered, plaintiff says that he is entitled to be quieted in the possession of said premises, and in the title to the improvements thereon, for the reason—

1. That he is a *bona fide* purchaser for value as aforesaid.

2. Because said pretended deed from said Fritz and Malvina Sittel to Edwin D. Chadick and associates were executed and delivered by them with the intention to evade the laws of the Choctaw Nation, and was contrary to the laws of the Choctaw Nation, and contrary to the treaties between the Choctaw Nation and the Government of the United States, and should not be upheld.

3. Because neither the said J. W. McLoud, trustee, or Francis I. Gowen, receiver, have any right under the treaties of the United States or the laws of the Choctaw Nation to have and maintain said property in the Choctaw Nation.

4. That the said Choctaw Coal & Railway Company not being one of the beneficiaries named in said deed of trust, has no contract with said Fritz and Malvina Sittel, conveying to it a lien or other benefit upon or in the property aforesaid, and cannot be substituted in said trust deed in place of the beneficiaries named therein, having no privity thereby with said Sittels.

5. The beneficiaries named in said deed of trust having disavowed any claim thereunder and declared that they advanced nothing thereunder, and never accepted the same, or knew of its execution and delivery, the same is absolutely void.

6. The said Choctaw Coal & Railway Company having been restricted in the act giving it the right to be in the Indian Territory

and to the occupany of the lands therein specified and therein specifically denied upon penalty of forfeiture of all of their rights, the right to make any effort to extend its occupancy, the advance-
17 ment or investment of money by it, or its agents, in the improvement of Indian lands was not only *ultra vires*, but actually prohibited and consequently void and unenforceable.

VIII.

Wherefore, plaintiff sues and prays that summons issue and be served upon said J. W. McLoud as trustee and that proper notice and summons, with a copy of this complaint, be issued and served upon said Francis I. Gowen, receiver, at Philadelphia, Pa., commanding them to answer this complaint at the next term of this Honorable Court, as is provided by law; that your Honor grant your most gracious order of Injunction, forbidding and restraining said J. W. McLoud, trustee, from further proceeding with the sale of said property until the further orders of this court. That in case this Honorable Court will not issue its order of injunction upon the short notice now given, then plaintiff prays that this cause may be set down for hearing upon this application at no distant day, and that in the meantime this court will issue a restraining order to said McLoud, trustee, forbidding and restraining him from proceeding with the sale of said property as advertised until further orders of this court, that upon final hearing plaintiff have a decree from this honorable court, perpetuating said injunction, cancelling and annulling said deed of trust in so far as it affects plaintiff's rights in the premises aforesaid and quieting plaintiff's title in and to the improvements aforesaid, and decreeing to plaintiff the possession of said property; that all right, title and interest in or to any of said property be adjudged and decreed out of defendants and vested in the plaintiff, with all appropriate writs and remedies to enforce such decree; and for costs of court, and for general relief, as in duty bound he will ever pray.

W. H. ANSLEY.

Subscribed and sworn to before me, this 13th day of Dec., A. D. 1895.

[SEAL.]

P. B. STONER,
Clk U. S. Ct., I. T., Cen. Dist.,
at So. McAlester, I. T.
COLE & REDWINE,
MOSLEY & SMITH,
Attorneys for Plaintiff.

EXHIBIT A.

INDIAN TERRITORY, *Tobucksey County:*

Know all men by these presents:
18 That we Fritz Sittel and Malvina Sittel, his wife, of said county and Territory, for and in consideration of the sum of one dollar to us paid by Edwin D. Chadick, and to secure the debt

and sums of money hereinafter named, and for other good and valuable considerations hereinafter contained, have sold, and by these presents do sell, transfer, convey and confirm unto the said Edwin D. Chadick, as trustee, and to his successors in this trust, the following described property, to-wit: In South McAlester, Indian Territory.

House No. 1, Lot 9, block 46, frame house, containing four rooms, iron roof.

House No. 2, lot 11, block 46, frame house, containing four rooms, iron roof.

House No. 3, block 46, lot 12, frame house containing four rooms, iron roof.

House No. 4, lot 13, block 46, frame house, containing four rooms, iron roof.

House No. 5, lot 7, block 46, frame house, containing five rooms, single roof.

House No. 6, lot 6, block 46, house containing four rooms, shingle roof, bay window.

House No. 7, block 46, lot 5, frame house, containing four rooms, shingle roof.

House No. 8, lot 1, block 46, frame house, containing three rooms, shingle roof.

House No. 9, lot 4, block 46, frame house, containing rooms four, roof shingle.

House No. 10, lot 5, block 46, frame house, containing four rooms, shingle roof.

House No. 11, lot 2, block 46, frame house, containing four rooms, shingle roof.

House No. 12, lot 6, block 46, frame house containing four rooms, shingle roof.

Hotel Mountain House, lots 11 & 12, block 36, frame house containing 28 rooms.

Hotel Kali Inla, lots 23, 24, 25 & 26, block 46, two stories stone, third story frame, 100 x 106.

Mansard roof, W. Chamberlain house, lots 1 & 2, block 30, frame house, containing 6 rooms, shingle roof.

Henry Miller house, lot 15, block 44, two rooms, shingle roof.

S. L. Shellenberger house, lots 11 & 12, block 45, hexagonal, 22 feet sides, seven rooms and seven foot porch all round house, shingle roof.

19 E. D. Chadick's house, 16 x 74, main building five rooms, two rooms 16 x 20, hall way, 10 x 26, two rooms 12 x 14, shingle roof, 16 foot porch all round house.

Spring house in park, 16 x 16, shingle roof stone basement.

Headquarter stable in park, 40 x 73, 16 foot wagon shed, iron roof; stable shingle roof.

Church, 30 x 60, in park, frame shingle roof.

Law office in park, 30 x 72, veranda in front, 12 rooms, shingle roof, porch iron roof.

Commissioners court in park, 16 x 62, wing 14 x 16, shingle roof.

Jail in park, 16 x 16, shingle roof.

Together with all the rights and appurtenances to the same in any manner appertaining or belonging.

To have and to hold all and singular the said property unto the said Edwin D. Chadick, his assigns, substitutes, successors, forever.

And we do, by these presents, bind ourselves, our heirs, executors and administrators, to warrant and forever defend all and singular the said property and the peaceable possession thereof to the said Edwin D. Chadick, trustee, his successors, assigns or substitutes against the lawful claims of any person whatsoever, claiming or to claim the same or any part thereof.

This sale, transfer and conveyance, however, is intended to be a trust, to secure the payment of $45,000.00, furnished and advanced by Charley Hartshorne and William C. Alderson, of Philadelphia, Pa., and their associates, for the purpose of creating and furnishing the said houses and improvements, which sum has been expended for said purpose by them and their agents. The said sum is to bear six per cent. interest per annum from this date, and is to become due and payable 12 months from date hereof.

The said Chadick is, during the continuance of this trust, to have full, quiet and undisturbed possession of said premises, as trustee and agent for said Fritz Sittel, having full control thereof, with authority to care for the same, keep up repairs, rent and to collect the rents for the same as trustee and for said Sittel as aforesaid, and shall account to said Sittel for the amount thereof, deducting all the expenses and retaining one-half of the net income for his services rendered and to be rendered in connection with this business and this trust. To add to said buildings and said improvements when he should deem it necessary or advisable and when such addition shall be made, the cost thereof shall be included and secured in this trust. The income from said property, after deducting expenses and compensation of said Chadick, trustee, shall be applied to the payment of principal and interest of said debt, but said Chadick shall not be held to account for rent of the dwelling in which he now resides, or the barn, outhouses therewith connected, nor for rent of the church building, nor for rent of any building occupied by the United States court or officials, so long as they shall pay no rent.

And nothing in this deed shall be construed to convey any land or any interest in land.

Upon payment of said debt well and truly made, this conveyance is to become null and of no further force or effect, and shall be released at the cost and expense of said Sittel.

But in case of the failure or default in the payment of said debt, together with the interest thereon accured, according hereto, at the maturity of the same, then in such event the said Edwin D. Chadick is, by these presents, fully authorized and empowered, and it is made his special duty at the request of the said Charley Hartshorne and William C. Alderson, or any of their associates, at any time made after the maturity of said debt, to sell the above described property to the highest bidder for cash in hand, at South McAlester, in the Indian Territory, at the front door of the post office, after giving

public notice of the time, place and terms of said sale, by a publication in some newspaper published in said county of Tobucksey, or by written or printed notices, posted in three public places in said South McAlester ten days prior to said day of sale, and after said sale as aforesaid, to make to the purchaser or purchasers thereof, a good and sufficient deed in law to the property so sold, with the usual warranties, and to receive the proceeds of said sale and the same to apply to the payment of said debt, the interest accured thereon and the expenses of executing said trust, including ten per cent. commission to said trustee, holding the remainder thereof subject to the order of the said Fritz Sittel.

And it is hereby specially provided that should the said Edwin D. Chadick from any cause whatever fail or refuse to act or become disqualified from acting as such trustee, then the said Charley Hartshorne or William C. Alderson, or any of their associates as
21 aforesaid, shall have full power to appoint a substitute in writing who shall have the same powers as are hereby delegated to the said Edwin D. Chadick, and we, by these presents, fully and absolutely ratify and confirm any and all acts which the said Edwin D. Chadick, his successor or substitute as herein provided, may do in the premises by virtue thereof.

Witness our hands and scrolls for seals, this 23rd day of October, 1890.

FRITZ SITTEL.
MALVINA SITTEL.

Attest: F. L. MOELLER.

EXHIBIT B.

No. 969.

EDWIN D. CHADICK, Trustee,
vs.
RECEIVERS C. C. & RY. CO.

And now on this the 4th day of October, 1895, this matter coming on for hearing upon the report of Yancey Lewis, Esq., Special Master in Chancery herein, which said report was filed in this court on the 11th day of Sept., A. D. 1895, to which there has been filed no exceptions, and the court being fully advised in the premises, doth confirm said report in all respects. It is, therefore ordered, adjudged and decreed by the court that the petition of the plaintiff, Chadick, be denied and dismissed with costs.

The court further finds from said report and decree that the trust deed or mortgage sued on by the plaintiff, a copy of which is attached to plaintiff's petition, is a valid and subsisting mortgage and a lien on the house and buildings mentioned in said petition for the amount of money advanced by the Choctaw Coal & Railway Co., and used by Edwin D. Chadick in the erection and construction of said buildings, which sums amount to $53,320.96, and that J. W. McLoud is the legal and proper trustee for the Choctaw Coal & Railway Co.,

under said mortgage, or deed of trust, and as such trustee is entitled to exercise all the powers conferred therein and thereby upon such trustee, and that said McLoud as such trustee is fully authorized to sell said property for the payment of the same in the manner provided for in said deed of trust for the sale of said property, a copy of which deed of trust or mortgage is hereto attached and made a part of this decree, and the said McLoud as trustee is authorized to make to the purchaser of said property or purchasers of said
22 property a good and sufficient deed in law to the property so sold, with the usual warranties, and to receive the proceeds of said sale and to apply the same to the payment of said indebtedness, the interest accrued thereon, and the expenses of executing said trust and the costs therein, and to hold the remainder thereof, if any, subject to the order of the said Fritz Sittel as provided in said deed of trust.

EXHIBIT C.

Notice is hereby given that in pursuance of a deed of trust executed by Fritz Sittel and Malvina Sittel, on the 23rd day of Oct., A. D., 1890, to Charles Hartshorne, Wm. C. Alderson, and their associates, and in pursuance of an order of the United States Court in the Central District of the Indian Territory, of date Oct. 4, 1895, the undersigned, as trustee, under said deed of trust, will sell, on Dec. 30, 1895, at eleven o'clock, a. m., at the front door of the post office in South McAlester, Tobucksey County, Choctaw Nation, Indian Ter., to the highest bidder for cash in hand, the following described property, situated in South McAlester, Ind. Ter., to-wit:

The frame dwelling house situated on lot 9, in block 46 of said town of South McAlester, known as house No. 1, (Bradford.)

The frame dwelling house situated on lot 11, block 46, of said South McAlester, known as House No. 2.

The frame dwelling house situated on lot 7, block 46 of said South McAlester, known as house No. 5, (Argo.)

The frame dwelling house situated on lot 8, block 46, of South McAlester, known as house No. 6, (Zike.)

The frame dwelling house situated on lot 5, block 46, of said South McAlester, known as house No. 7, (Holden.)

The frame dwelling house situated on lot 1, block 46, of said South McAlester, known as house No. 8, (Stuart.)

The frame dwelling house situated on lot 4, block 46, of said South McAlester, known as house No. 9, (Holden.)

The frame dwelling house situated on lot 3, block 46, of said South McAlester, known as house No. 10, (Knapp.)

The frame dwelling house situated on lot 2, block 46, of said South McAlester, known as house No. 11, (Huff.)

The building known as the Kali Inla hotel building, occupied by court officers, the first two stories being stone and third and fourth stories frame, situated on lots 23, 24, 25 & 26, in block 48, of said South McAlester, I. T., (Court House.)

And the undersigned as trustee will give to the purchaser
23 or purchasers of said property a good and sufficient deed in law to said property with the usual warranties.

Dated at South McAlester, I. T., this 27th day of November, A. D., 1895.

(Signed) J. W. McLOUD, *Trustee.*

EXHIBIT D.

Sheriff's Conveyance.

THE INDIAN TERRITORY,
Choctaw Nation, County of Tobucksey:

Know All Men by These Presents:

That I, Jonas Peabody, sheriff of Tobucksey county, Choctaw Nation, I. T., by virtue of the authority vested in me by the constitution and laws of the Choctaw Nation as such sheriff, did on this the 24th day of June, 1895, within the legal hours of sale, in front of the court house door of Tobucksey county, Choctaw Nation, at McAlester, I. T., after giving due notice and advertising the same according to law, sell to the highest and best bidder for cash in hand the following described property claimed by J. W. McLoud as trustee for the Choctaw Coal & Railway Co., which property was forfeited to the Choctaw Nation, together with all the rights, privileges and rights of occupancy to the lands thereunto attached and belonging under and according to the laws of the said Choctaw Nation, all of which is described as follows, to-wit:

One house known as the Kali Inla hotel building, described as lots 23, 24, and No. 25 and No. 26, in block 48; one house known as the H. G. Knapp residence, described as lot No. 3, block 46; house No. 10; one house known as the J. M. Zike residence, described as lot No. 8, block No. 46, house No. 6. One house known as the Mr. Huff residence, described as lot No. 2, block No. 46, house No. 11. One house known as the J. F. Holden residence, described as being on lots No. 4 or No. 5, block 46.

All of the above described property is situated in the town of South McAlester, Choctaw Nation, I. T. And, whereas, at said sale the said premises were sold and struck off to W. H. Ansley, a citizen of the Choctaw Nation, for the sum of $270.00, he being the highest and best bidder therefor, and that being the highest sum bid for same.

Now, therefore, in consideration of the aforesaid sum, the receipt of which is hereby acknowledged, I, Jonas Peabody, sheriff as
24 aforesaid, have sold, and by these presents do grant and convey unto the said W. H. Ansley, his heirs and assigns, all of the rights, title, interest and appurtenances to the aforesaid property belonging, to have and to hold the same, together with all the rights, privileges and rights of occupancy to the lands thereunto attached and belonging under and according to the laws of the Choctaw Nation, unto the said W. H. Ansley, his heirs and assigns forever.

Witness my hand this the 24th day of June, 1895.

(Signed) JONAS PEABODY,
Sheriff Tobucksey Co., Choctaw Nation, I. T.,
By WM. ANSLEY,
Deputy Sheriff.

CENTRAL DISTRICT,
Choctaw Nation, Indian Territory:

On this the 9th day of Dec., 1895, personally appeared before me a Notary Public within and for the Central jud. district of the Ind. Ter., Wm. Ansley, to me personally well known to be the person whose name is signed to the foregoing instrument of conveyance, and stated that he had signed and executed the same for the consideration and purposes herein set forth, as his free voluntary act and deed.

Witness my hand as such Notary Public, on this the day and year above mentioned.

C. J. WATSON,
[SEAL.] *Notary Public.*

EXHIBIT E.

THE INDIAN TERRITORY,
Choctaw Nation, Indian Territory:

Know all men by these presents:

That I. Jonas Peabody, sheriff of Tobucksey county, Choctaw Nation, I. T., by virtue of the authority vested in me by the constitution and laws of the Choctaw Nation as such sheriff, did on this the 24th day of June, 1895, within the legal hours of sale, in front of the court house door of Tobucksey county, Choctaw Nation, at McAlester, I. T., after giving due notice and advertising the same according to law, sell to the highest and best bidder for cash in hand the following described property claimed by J. W. McLoud as trustee for the Choctaw Coal & Ry. Co., which property was forfeited to the Choctaw Nation, together with all the rights, privileges and rights of occupancy to the lands thereunto attached and belonging under and according to the laws of the said Choctaw
25 Nation, all of which is described as follows, to-wit:

One house, known as the H. Hollar residence, described as lot No. 12, in block 46; one house known as the Mr. Stuart residence, described as lot No. 1, in block 46, and house No. 8.

All of the above described property is situated in the town of South McAlester, Choctaw Nation, I. T. And, Whereas, at said sale the said premises were sold and struck off to Jas. Pusley, a citizen of the Choctaw Nation, for the sum of $70.00, he being the highest and best bidder therefor, and tnat being the highest sum bid for same.

Therefore, in consideration of the aforesaid sum, the receipt of which is hereby acknowledged, by Jonas Peabody, as Sheriff aforesaid, have sold, and by these presents do grant and convey unto the said Jas. Pusley his heirs and assigns, all of the rights, title, interest and appurtenances to the aforesaid property belonging, to have and

to hold the same, together with all the rights, privileges and rights of occupancy to the lands thereunto attached and belonging under and according to the laws of the Choctaw Nation, unto the said Jas. Pusley, his heirs and assigns forever.

Witness my hand this the 24th day of June, 1895.

(Signed) JONAS PEABODY,
Sheriff Tobucksey Co., Choctaw Nation, I. T.,
By WM. ANSLEY,
Deputy Sheriff.

IND. TER., *Central Dist.:*

On this the 9th day of Dec., 1895, personally appeared before me a Notary Public within and for the Central jud. district of the Ind. Ter., Wm. Ansley, to me personally well known to be the person whose name is signed to the foregoing instrument of conveyance, and stated that he had signed and executed the same for the consideration and purposes herein set forth, as his free voluntary act and deed.

Witness my hand and seal on this the day and year above mentioned.

[SEAL.] C. J. WATSON,
Notary Public.

EXHIBIT F.

Sheriff's Conveyance.

26 THE INDIAN TERRITORY,
Choctaw Nation, County of Tobucksey:

Know All Men by These Presents:

That I. Jonas Peabody, sheriff of Tobucksey county, Choctaw Nation, I. T., by virtue of the authority vested in me by the constitution and laws of the Choctaw Nation as such sheriff, did on this the 24th day of June, 1895, within the legal hours of sale, in front of the court house door of Tobucksey county, Choctaw Nation, at McAlester, I. T., after giving due notice and advertising the same according to law, sell to the highest and best bidder for cash in hand the following described property claimed by J. W. McLoud as trustee for the Choctaw Coal & Railway Co., which property was forfeited to the Choctaw Nation, together with all the rights, privileges and rights of occupancy to the lands thereunto attached and belonging under and according to the laws of the said Choctaw Nation, all of which is described as follows, to-wit:

One house known as the J. D. Bradford house, described as lot No. 9, block No. 46, house No. 1. One house known as the O. W. Argo residence, described as lot No. 7, block 46, House No. 5.

All of the above described property is situated in the town of South McAlester, Choctaw Nation, I. T. And, whereas at said sale the said premises were sold and struck off to E. T. Richards, a citizen of the Choctaw Nation, for the sum of — he being the highest and best bidder therefor, and that being the highest sum bid for same.

Now, therefore, in consideration of the aforesaid sum, the receipt of which is hereby acknowledged, I Jonas Peabody, Sheriff as aforesaid, have sold, and by these presents do grant and convey unto the said E. T. Richards, his heirs and assigns, all of the rights, title, interest and appurtenances to the aforesaid property belonging, to have and to hold the same, together with all the rights, privileges and rights of occupancy to the lands thereunto attached and belonging under and according to the laws of the Choctaw Nation, unto the said E. T. Richards, his heirs and assigns forever.

Witness my hand this the 24th day of June, 1895.

(Signed) JONAS PEABODY,
Sheriff Tobucksey Co., Choctaw Nation, I. T.,
By WM. ANSLEY,
Deputy Sheriff.

27 IND. TER., *Central Dist.:*

On this the 9th day of Dec., 1895, personally appeared before me a Notary Public within and for the Central jud. district of the Ind. Ter., Wm. Ansley, to me personally well known to be the person whose name is signed to the foregoing instrument of conveyance, and stated that he had signed and executed the same for the consideration and purposes herein set forth, as his free voluntary act and deed.

Witness my hand as such Notary Public, on this the day and year above mentioned.

C. J. WATSON,
Notary Public.

EXHIBIT G.

Conveyance of Property.

INDIAN TERRITORY,
Choctaw Nation, County of Tobucksey:

Know All Men by These Presents: That for and in consideration of the sum of $1.00, the receipt of which is hereby acknowledged, I have this day bargained, sold, conveyed and granted to W. H. Ansley, a citizen of the Choctaw Nation, his heirs and assigns, the following described property, to-wit, one house known as the H. Hollar residence, described as lot No. 12, in block No. 46; one house known as Mr. Stuart's residence, described as lot No. 1, in block No. 46, house No. 8. All of the above described property being situated in the town of South McAlester, Indian Territory.

To have and to hold the same, together with all the rights, privileges and rights of occupancy to the lands thereunto attached under and according to the laws of the Choctaw Nation, unto the said W. H. Ansley, his heirs and assigns forever.

Witness my hand on this the 9th day of Dec., 1895.

(Signed) JAMES PUSLEY.

INDIAN TERRITORY, *Central District:*

On this, the 9th day of December, 1895, personally appeared before me, a notary public within and for the Central Jud. District for the Ind. Ter., James Pusley, to me personally well known to be the person whose name is signed to the foregoing instrument
28 of conveyance, and stated that he had signed and executed the same for the consideration and purposes therein mentioend and set forth, as his free voluntary act and deed.

Witness my hand and seal on this the day and year last above mentioned.

C. J. WATSON,
Notary Public.

EXHIBIT H.

Conveyance of Property.

INDIAN TERRITORY, *County of Tobucksey:*

Know All Men by These Presents: That I, E. T. Richard, a citizen of the Choctaw Nation, for and in consideration of the sum of $1.00 *Dollars* to me paid by W. H. Ansley, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto W. H. Ansley, his heirs and assigns, the following described property to-wit:

One house known as the J. D. Bradford residence, described as lot No. 9, in block 46, house No. 1.

One house known as the O. W. Argo residence, described as lot No. 7, in block 46, house No. 5.

All of the above described property is in the town of South McAlester, Indian Territory.

To have and to hold the same, together with all the rights, privileges and rights of occupancy to the lands thereunto attached, under and according to the laws of the Choctaw Nation, unto the said W. H. Ansley, his heirs and assigns forever.

Witness my hand on this the 9th day of December, 1895.

(Signed) E. T. RICHARDS.

INDIAN TERRITORY, *Central District:*

On this the 9th day of December, 1895, personally appeared before me a notary public within and for the Central judicial district of the Indian Territory, E. T. Richards, to me personally well known to be the person whose name is signed to the foregoing instrument of conveyance, and stated that he had signed and executed the same for the considerations and purposes therein mentioned and set forth as his free voluntary act and deed.

Witness my hand and seal as such Notary Public on this the day and year last above mentioned.

29 C. J. WATSON,
Notary Public.

Endorsed: Original, No. 1622. W. H. Ansley, Plaintiff, *vs.* Francis I. Gowen, *et al.*, rec. Complaint in Equity. Filed Dec. 13, 1895. P. B. Stoner, Clerk.

Notice.

(Caption Omitted.)

To J. W. McLoud, above named trustee, defendant:

You are hereby notified that on the 13th day of December, 1895, at 8 o'clock, p. m., or as soon thereafter as the matter can be heard on said date, I will present an application to the Hon. Yancey Lewis, judge of the United States Court for the Central Judicial District of the Indian Territory, in Chambers, at the United States court room in South McAlester, Indian Territory, for an injunction to restrain you or your agents from selling or offering for sale on the 14th day of December, 1895, or at any other time, the following described property, situated in the town of South McAlester, Indian Territory, to-wit:

One house known as the Kali Inla hotel building, described as being on lots 23, 24, No. 25 and No. 26, in block 48.

One house known as the H. G. Knapp residence, described as being on lot No. 3 in block No. 46, and house No. 10.

One house known as the J. M. Zike residence, described as being on lot No. 8, in block No. 46, and house No. 6.

One house known as the Huff residence, described as being on lot No. 9, in block No. 46, and house No. 11.

One house known as the J. F. Holden residence, described as being on lot No. 4 or 5, in block No. 46.

One house known as the J. D. Bradford —, described as being on lot No. 9, in block No. 46, and house 1.

One house known as the O. W. Argo residence, described as being on lot 7 in block No. 46, and house No. 5.

One house known as the Hollar residence, described as being on lot No. 12, in block No. 46.

One house known as the Stuart residence, described as
30 being on lot No. 1, in block No. 46, and house No. 8.

Prayed for in my complaint, at the hearing whereof you may appear and resist the same if you so desire.

Witness my hand on this the 12th day of October, 1895.

W. H. ANSLEY,
Above Named Plaintiff,
By COLE & REDWINE,
MOSLEY & SMITH,
Att'ys.

I hereby certify that I served the within and foregoing notice on the said J. W. McLoud as trustee in the town of South McAlester, Indian Territory, on the 12th day of December, 1895, by then and there delivering to him a true copy of said notice. I am not a party to nor interested in the within named action.

WILLIAM LOFTIS.

Subscribed and sworn to before me on this 13th day of December, 1895.

[SEAL.] M. M. WINNINGHAM,
Notary Public.

Endorsed: W. H. Ansley, Plaintiff, *vs.* J. W. McLoud as Trustee and Francis I. Gowen, as Receiver, Defendants. Notice for Injunction.

Demurrer.

(Caption Omitted.)

Come now the defendants and demur to the complaint in equity filed herein, for the reason that the same does not state facts sufficient to constitute a cause of action, or to entitle the plaintiff to an order of injunction.

J. W. McCLOUD,
C. B. STUART,
Attorneys for Defendants.

Endorsed: No. 1622. W. H. Ansley, pl'ff, *vs.* Francis I. Gowen, Receiver, and J. W. McLoud, Trustee. Filed Dec. 27, 1895. P. B. Stoner, Clerk.

Demurrer and Answer.

(Caption Omitted.)

31 Comes now the defendants in the above cause, and say that the complaint and amended complaint filed herein are insufficient in law, and upon this they pray the judgment of the court.

And for answer herein, defendants deny that Fritz Sittel occupied as his homestead and farm the tract of land upon which the town of South McAlester is now situated. And they deny that said tract of land was and is a part of the common domain of the Choctaw tribe of Indians.

They deny, except hereinafter admitted, that Fritz Sittel and his wife ever purchased the Indian title to the land aforesaid from any person whomsoever who had given up the same as his claim and improved the same under the laws and customs of the Choctaw Nation. And that they held and owned the exclusive right to the possession thereof so long as the same should be held by Sittel and his vendees in accordance with the laws of the Choctaw Nation, and that said Sittels abandoned same prior to the Peabody sale.

They deny, except as hereinafter admitted, that said Fritz Sittel ever platted said land in a manner described in their complaints, and deny that said Fritz Sittel and his wife ever were in the exclusive and adverse possession of the land named in the complaint and the lots into which the same was divided. And deny that they were entitled to the exclusive and adverse possession thereof.

They deny that the agreement set forth in the nature of a trust deed in said complaint was ever made between Sittel and his wife and Chadick contrary to the laws of the Choctaw Nation and of the United States and the treaty stipulations. And deny that said trust deed was executed and made with the purpose then and there known

to all of the parties thereto, to evade the laws of the Choctaw Nation and of the United States, and to enable non-citizens not under the employ of any citizen of the Choctaw Nation, nor in said Territory under any permit from said Nation to actually own, possess and control improvements in the Choctaw Nation.

They deny that the defendants or any of them were without right or authority under any law of the United States or of the Choctaw Nation to erect improvements in the Choctaw Nation or upon the lands of said Nation. And they deny that Chadick and his associates, without right or authority whatsoever, conspired with Fritz and Malvina Sittel to build a town in said Choctaw Nation
32 at a point where South McAlester now stands, to be occupied and controlled by white citizens of the United States and non-citizens of the Choctaw Nation, not authorized to live in the Choctaw Nation.

Defendants deny that Chadick had but one associate in and about the enterprise mentioned in the complaint. And deny that the Choctaw Coal & Railway Co. was ever his associate by express agreement or with the knowledge of said company.

They deny that Chadick was ever in full charge and control of the property of the Choctaw Coal & Railway Co. at the time of the execution of the deed of trust mentioned in the complaint.

They deny that defendant, Gowen, associated himself with Chadick in the deed of trust mentioned, and together with him, acting jointly as receivers of said company, caused some of the most expensive improvements to be erected upon the lands mentioned in plaintiff's complaint, and den*ies* that said Gowen is receiver and was when this suit was brought.

They deny that McLoud, as attorney for said railway company or for said receivers at any of the times mentioned in the complaint, participated in any advance of moneys by said railway company for the purpose of erecting the improvements aforesaid, or participated in procuring them to be erected, and advised, aided and abetted therein.

Defendants deny that a copy of an act of Choctaw Council, approved November 14, 1890, and signed by W. N. Jones as Principal Chief, was ever served upon the officials of said railway company, or that they ever had any notice thereof, or that said company ever made any improvements with full knowledge that it had no right to do so.

Defendants deny that the original deed of trust referred to was ever in the possession of Francis I. Gowen, Receiver, and J. W. McLoud, Trustee.

Defendants admit that on the 4th day of October, 1895, in case No. 968 on the docket of this court, entitled Edwin D. Chadick, Trustee *vs.* Francis I. Gowen and James W. Throckmorton, it was decreed by the court that the said The Choctaw Coal & Railway Co. had advanced for the construction and erection of the buildings in South McAlester upon the lands described in the complaint herein, the sum of $53,220.96; and that McLoud was substituted as trustee in said trust deed in place of E. D. Chadick. And defend-
33 ants admit that the other allegations of the complaint in regard to the decree aforesaid in section 3 are true.

Defendants deny that J. W. McLoud as trustee has seized possession of and been controlling and retaining to non-citizens of the Choctaw Nation the houses and lands hereinbefore described, claiming to act as trustee for The Choctaw Coal & Railway Co., and that he was so acting prior to the sale by the Indian Sheriff, in the manner set forth in the complaint, contrary to the laws of the Choctaw Nation, and of the United States.

Defendants deny that the property mentioned in the complaint and advertised to be sold is of the reasonable value of $60,000, and of the monthly rental of the value of $300.

Defendants deny that the notice of sale by McLoud is false in any sense, or recites facts that are not true; and deny that McLoud and Gowen are attempting to do by notice and sale outside of the doors of the court what they know and believe to be without a warrant of law.

Defendants deny that they ever made any allegation in the case of Throckmorton and Gowen against J. T. Miller, to the effect that the Choctaw Coal & Railway Co. advanced the money with which improvements upon the property in question were erected, and that the same was voluntarily advanced by it and through its manager, Edwin D. Chadick, and was done for the purpose of obtaining the occupancy of said land and to evade the laws of the United States and of the Choctaw Nation; and that said money was advanced by said Choctaw Coal & Railway Co. with its full knowledge and consent, and for the purpose of building a town at South McAlester, Indian Territory, off of its said right of way.

Defendants deny that plaintiffs have placed a correct construction in their complaint upon the act of Congress of February 18, 1888, granting to the Choctaw Coal & Railway Co. — to run the right of way through the Indian Territory. And deny that the Choctaw Coal & Railway Co. had ever, knowingly and with its consent, done any act in violation of said act of Congress.

Defendants deny that the Sheriff of Tubucksey County, through his deputy, Wm. Ansley, caused the improvements sold at said sheriff's sale to be advertised as the law requires. And deny that petitioner ever became the purchaser in good faith of any of the land or premises, or that James Pusley or E. T. Richards ever
34 became the purchaser in good faith of said property or any part thereof.

Defendants deny that Fritz Sittel and Malvina, his wife, have long since ceased to assert any claim, title or control whatever either in or to the aforesaid lands or the improvements thereon, and that if they ever claimed to own the improvements that they have long since abandoned such claim.

And for further answer herein, defendants allege the truth to be that, prior to the execution of the deed of trust aforesaid, and the erection of the houses and buildings spoken of, said Chadick was then the manager of the Choctaw Coal & Railway Co., and that he entered into an agreement, not as manager of said company, but personally, with Fritz Sittel and one Edward Sittel, a citizen of the United States, by the terms of which agreement, Fritz Sittel and Ed-

ward Sittel agreed that the said Chadick should receive one-third of the profits to be realized from the sale and rental of land at South McAlester, the ownership of which was claimed by said Fritz Sittel. That said land was to be designated and treated as a townsite, and the said Chadick, in compliance with his said personal agreement with the Sittels, and without the knowledge of Hartshorne and Alderson, the beneficiaries named in said deed, and without the knowledge of the Choctaw Coal & Railway Co., advanced a large sum of money belonging to the Choctaw Coal & Railway Co., for the erection of the buildings aforesaid. That after the erection of said buildings, in cause No. 958, on the docket of this court, entitled Chadick, trustee, *vs.* The Receivers of the Choctaw Coal & Railway Co., the said Chadick endeavored to enforce in said suit the rights which he claimed to have acquired in said deed of trust. That said suit was submitted for hearing to Yancy Lewis, Master in Chancery, who rendered a report in said suit adverse to the claim of said Chadick, which report is marked Exhibit A and asked to be made a part of this answer.

That thereafter, said report of said Yancy Lewis was, on the 4th day of October, 1895, confirmed by the United States Court in the Indian Territory for the Central district, there being no exceptions filed to the report of the Master, a copy of the judgment confirming said report being hereto attached, marked Exhibit B, and asked to be made a part of this answer.

Defendants say further that under and by virtue of said Master's report and the facts founds therein, and by virtue of the
35 judgment of the United States Court confirming the same, it was judicially ascertained that the said Chadick and the Sittels aforesaid entered into the agreement mentioned and the deed of trust aforesaid for their own private gain, and for the purpose of defrauding the beneficiaries in said deed of trust and the Choctaw Coal & Railway Company, whose money was advanced by Chadick without its consent, and that Hartshorne and Alderson, the beneficiaries in said deed never had any knowledge of the execution of said deed until long after its execution, when notice of the existence of the same was received by them accidentally and not through Chadick.

And so defendants allege the facts to be: That by virtue of the acts of the said Chadick in advancing the money in the manner above mentioned, the Choctaw Coal & Railway Company became entitled to an equity in the premises so constructed with its money, and was entitled to hold and occupy the same for the purposes of collecting money so advanced and thereby reimburse itself.

Defendants ask that this court impress upon said premises said equity in favor of said Choctaw Coal and Railway Company, and J. W. McLoud, its trustee.

Defendants further say that Edwin D. Chadick and Fritz Sittel and his wife were all parties to the suit No. 968, mentioned above, being duly served with process, and were bound and concluded by the decree rendered in the same, which declared that the deed of trust aforesaid was a valid and subsisting mortgage and a lien on the

houses and buildings mentioned in said petition, for money advanced by the Choctaw Coal and Railway Company, and used by Chadick in the erection and construction of said buildings, which amounted to $53,220.96. And that McLoud, trustee, should be authorized and directed to sell said property under said deed of trust until the mortgage deed, with interest, less the proceeds of rents and sales, was collected, And that the Choctaw Coal and Railway Company being the party held advancing the money for such improvements, should be beneficially entitled to the contract evidenced by the deed of trust.

Defendants say that the money so advanced has never been collected, and that only a small part of the same has ever been collected by McLoud as trustee aforesaid. And that the property conveyed by said deed of trust and the rents and revenues of the same are in no sense sufficient, at the highest valuation to be placed on them, to satisfy the mortgage indebtedness mentioned.

36 Defendants say that the money invested by said Chadick was not known by them to be invested for any unlawful purpose, if the purpose was unlawful, and that there was no intention on the part of the Choctaw Coal and Railway Company, or any one acting in good faith for it to violate any law of the Choctaw Nation or of the United States in the erection of said improvements.

Defendants further say that plaintiffs ought not to have and maintain this suit, because they are attempting to practice a fraud upon the jurisdiction of this court, and assert a claim which is fraudulent, both in law and in fact; for defendants allege the truth to be: That the sale made by Jonas Peabody, Indian Sheriff, was not a valid sale, because said sale was made in open violation of an order issued by the United States Court for the Central district of the Indian Territory on the 24th day of June, 1895, directed to Jonas Peabody and to Wm. Ansley, deputy, commanding them not to sell at sheriff's — on the 24th day of June, 1895, or any other time, the buildings mentioned in the complaint. And that this order was made after service of notice on Jonas Peabody and his agents two days before the sale was made by them that the injunction granted would be applied for on the 24th day of June, 1895, at the hour of 8 o'clock A. M. That notwithstanding said notice and order, said sale was made in violation of the order of said court and thereby conveyed no right or title to any person whomsoever purchasing at said sale in controversy.

Defendants further say that the purchases by plaintiffs herein and those associated with him of the premises in controversy were made in violation of law, for the reason that said purchase, while ostensibly made for the benefit of the person named in the deeds, were made really for the benefit of William Ansley, father of plaintiff herein, who was deputy Indian Sheriff at the time, and who could not lawfully purchase at his own official sale. That no consideration was paid for the deeds executed by Jonas Peabody to the premises in controversy, and there was in fact nothing of value passed between said sheriff and the purchasers at said sale. That whatever price, if any was paid, was grossly inadequate.

Defendants further say that said sale was not made in accordance with the laws of the Choctaw Nation; that the property was sold on credit; that no notoriety was given to said sale; and that there was no opportunity for competitive bidding at said sale; and that
37 this opportunity was denied by the plaintiff and his confederates for the sole purpose of acquiring said premises without the payment therefor of any reasonable sum of money and in order to prevent bidding at said sale.

Defendants further say that they are all citizens of the United States and that under the laws and treaties of the United States, the Choctaw Nation has no jurisdiction ever either the person or the property of non-citizens.

That said sale by said Indian sheriff was made and the pretended forfeiture declared thereby without any hearing in favor of these defendants, and without giving them any opportunity to assert any defense.

That said Indian Sheriff officially declared that these defendants were intruders as to the premises aforesaid, and unlawfully holding the premises in question for that reason, without giving these defendants any opportunity in any court or place of showing that such official declaration on the part of said Indian Sheriff was false.

Wherefore, for all the reasons aforesaid, defendants say that the sales made by the Indian Sheriff aforesaid are and were invalid and defendants pray they be so declared and annulled and held for naught. And defendants say that by reason of the facts alleged aforesaid, these plaintiffs ought not to have anything by this suit.

And defendants pray that upon final hearing they be discharged with their costs, and permitted to go hence without day.

CHAS. B. STUART,
Att'y for Def'ts.

EXHIBIT A.

In the United States Court in the Indian Territory, Central District.

No. 968.

EDWIN D. CHADICK, Trustee, Plaintiff,
vs.
RECEIVERS OF THE CHOCTAW COAL AND RAILWAY COMPANY, Defendants.

Report.

By order entered on the 14th day of August, 1894, by this court this case was referred to the undersigned, with directions to take all the testimony in said case and report the same to the court, with findings of facts and conclusions of law. Thereafter, on
38 September 25, 1894, at South McAlester, I. T., the hearing of said cause was begun by me by agreement of all parties,

who were present by their attorneys. And thereupon plaintiff submitted his motion to strike out the plea of intervention of J. W. McLoud as Trustee, which motion appears in the papers, and which motion was by me overruled, to which ruling the plaintiff then and there excepted.

Plaintiff submitted his demurrers to the defendants' answers, which demurrers appear in the papers, and which were by me overruled, to which ruling the plaintiff then and there excepted.

Plaintiff and defendant then and there introduced the evidence hereto attached and marked Exhibit "A." Further hearing of the cause was then adjourned to a future date.

Upon October 4, 1894, the taking of testimony was resumed at the Bullet building in Philadelphia, due notice having been given to both parties, on said date, hearing was begun in the Bullet building in Philadelphia, and was adjourned from there to the office of the Lehigh Valley R. R. Co., 128 South 3rd street, Philadelphia, where the testimony of Charles Hartshorne and William C. Alderson was taken by me, which testimony is hereto attached and marked Exhibit B.

From the pleadings of the parties and the evidence taken I make the following findings of facts:

That on the 23rd day of August, 1890, Fritz Sittel and his wife, Malvina Sittel, executed a deed of trust to Edwin D. Chadick, trustee, which instrument is attached to plaintiff's complaint as an exhibit. That the execution of said deed of trust was consequent upon an agreement made by plaintiff with Fritz Sittel and Edward Sittel, by the terms of which plaintiff agreed to run the line of railway of the C. C. & R. R. Co. through the land which afterwards became the site of the town of South McAlester, and to procure the erection of dwellings, houses and other buildings on the same, for which he was to have one-third the profits realized from the sales and rentals of lands and houses at South McAlester, the site of which Fritz Sittel and his wife claimed to own by virtue of their rights as Choctaw citizens. That said agreement was made while Chadick was acting as manager of the Choctaw Coal and Railway Company, and that in pursuance of said agreement, the said Chadick advanced money of the C. C. & R. R. Co. to the amount of $85,957.04, which money was used in the erection of the
39 houses mentioned in said deed of trust. That as security for such money to the amount of $45,000, the deed of trust was executed by Fritz Sittel and wife. That while said deed of trust declared that the money used in the construction of said houses was advanced by Charles Hartshorne, William A. Alderson and their associates, no part of the same was advanced by the said Hartshorne or Alderson, neither of whom knew of said deed of trust until long after its execution. That Hartshorne was the President and Alderson was the Treasurer of the C. C. & R. R. Co. at the time of the execution of said deed of trust; that said deed of trust was given with the intent to secure the party actually advancing the money thereon, to the amount of $45,000, with interest at six per cent. from October 23, 1890. That the money that C. C. & R. R.

Co. so advanced was $85,957.04, that by rent collections and sales of property the C. C. & R. R. Co. and its receivers have received from the property mentioned in the deed of trust the sum of $6,404.05. That the collection of the rents of the property set out in the deed of trust was for a while made by an agent of the C. C. & R. R. Co., appointed by plaintiff while manager of said company and paid by said company, and thereafter was made by the receivers direct, that this was done while said Chadick was manager of the C. C. & R. R. Co., and afterwards while he was receiver; that on the 14th day of February, 1894, Charles Hartshorne and William C. Alderson, and the C. C. & R. R. Co., by its president, appointed J. W. McLoud as substitute trustee in lieu of said Chadick, with the powers conferred by said deed of trust, which appointment was concurred in by J. W. Throckmorton and Francis I. Gowen, receivers of the C. C. & R. R. Co.

Conclusions of Law.

I conclude that the agreement made by said Chadick with the two Sittels while he was manager of the C. C. & R. R. Co., under and pursuant to which the money of C. C. & R. R. Co. was used in the erection of the improvements in his complaint described, and to secure which the deed of trust was given, providing for the payment to said Chadick of one half the receipt of said improvements was inconsistent with the obligations and duties he owed the C. C. & R. R. Co., as its manager, being obviously an arrangement by which an agent was to obtain gains, unknown and undisclosed to the principal, by the use of the principal's money; that such agreement entered into this deed of trust and avoided its provisions, to the extent that they inured to the benefit of Chadick individually and that he should recover nothing by this action.

I conclude further that said deed of trust having been given to secure the party advancing money thereunder, and the C. C. & R. R. Co. being such party, such company should be held to be beneficially entitled in the contract evidenced by the deed of trust, it should be construed as existing for said company's benefit as the true party in interest, and J. W. McLoud, as its trustee, should be authorized and directed to sell said property as provided in said mortgage or deed of trust, until the amount of the mortgage debt of $45,000.00, with interest at 6 per cent. from October 23, 1890, less the proceeds of rents and sales, is collected.

(Signed) YANCEY LEWIS,
Special Master in Chancery.

Exhibit B.
(Heretofore copied at page 26.)

Endorsed: 1622. W. H. Ansley *vs.* Francis I. Gowen, *et al.* Demurrer and Answer. Filed 12–4–1899. E. J. Fannin, Clerk, by I. M. Dodge, D. C.

Replication.

(Caption Omitted.)

Comes the plaintiff, W. H. Ansley, and replies to defendants' answer, and denies that Chadick, as manager of the Choctaw Coal & Railway Company, entered into an agreement not as manager of said company, but personally with Fritz Sittel and one Ed Sittel, a citizen of the United States, by the terms of which agreement Fritz Sittel and Ed Sittel agreed that the said Chadick should receive one-third of the profits to be realized from the sale and rental of lands at South McAlester, the ownership of which was claimed by said Fritz Sittel. Plaintiff denies that the said Chadick, without the knowledge of Hartshorne and Alderson, the beneficiaries named in said deed, and without the knowledge of the Choctaw Coal & Railway Company, advanced a large sum of money belonging to the Choctaw Coal & Railway Company, for the erection of the buildings aforesaid.

41 He denies that after the erection of the building aforesaid, in cause No. 968, on the docket of this court, entitled "Chadick, Trustee, *vs.* The Receivers of the Choctaw Coal and Railway Company" the said Chadick endeavored to enforce in said suit the rights which he claimed to have acquired in said deed of trust.

Plaintiff denies that under and by virtue of the Master's report referred to in defendant's answer, and by virtue of the judgment of the United States court confirming the sale, it was judicially ascertained that the said Chadick and the Sittels aforesaid entered into the agreement mentioned and the trust deed aforesaid for their own private gain, and for the purpose of defrauding the beneficiaries in said deed of trust and the Choctaw Coal and Railway Company; and denies that Hartshorne and Alderson, the beneficiaries in said deed, never had any knowledge of the execution of said deed until long after its execution; denies that notice of the execution of the same was received by them accidentally and not through Chadick. Denies that by virtue of the act of the said Chadick in advancing the money in the manner he did in erecting the building- aforesaid, the Choctaw Coal and Railway Company became entitled to an equity in the premises so constructed with its money; denies that the said Choctaw Coal and Railway Company was entitled to hold and occupy said buildings for the purpose of collecting money so advanced in the erection of the same.

Plaintiff denies that the money invested by Chadick in the buildings aforesaid was not known to defendants to be invested for an unlawful purpose, but that every active official of the Choctaw Coal and Railway Company knew of said investments aforesaid. Denies that there was no intention on the part of the Choctaw Coal and Railway Company or any one acting for it, to violate any law of the Choctaw Nation or of the United States, in the erection of said improvements. Plaintiff denies that he has attempted to practice a fraud upon the jurisdiction of this court, or that he is asserting a

claim which is fraudulent both in law and in fact. Plaintiff denies that the sale made by Jonas Peabody, Indian sheriff, was not a valid sale; denies that said sale was made in open violation of an order issued by the United States court for the Central District of the Indian Territory, on the 24th day of June, 1895, directed to Jonas Peabody, and to William Ansley, deputy, commanding them not to sell at sheriff's sale, on the 24th day of June, 1895, or at any
42 other time, the buildings mentioned in the complaint. Denies that this order was made after service of notice on Jonas Peabody and his agent two days before the sale was made by them that the injunction alleged to have been granted would be applied for on the 24th day of June, 1895, at the hour of eight o'clock, a. m. Plaintiff further says that there never was any notice served upon Jonas Peabody, Sheriff of Tobucksey county, aforesaid, that there would be an application made to the United States Court at South McAlester, or at any other place, to restrain him or his deputies from selling the aforesaid mentioned property as aforesaid, and that there never was any injunction granted by the United States Court at South McAlester to restrain the said Jonas Peabody or any of his deputies from selling the property aforesaid.

Plaintiff denies that the purchase made by him and those associated with him of the premises in controversy were made in violation of law. Denies that the purchase made by the parties named in the deeds were made for the benefit of William Ansley, who was deputy Indian sheriff at the time said sales were made. Denies that the said W. H. Ansley who is the plaintiff herein, was deputy sheriff at the time said sale was made or at any other time, but alleges the truth to be that William Ansley was deputy Indian Sheriff, who is a different person from this plaintiff.

Denies that no consideration was paid for the deeds executed by Jonas Peabody to the premises in controversy; denies that there was in fact nothing of value passed between said sheriff and the purchasers at said sale, or that the price so paid was grossly inadequate; denies that said sale was not made in accordance with the laws of the Choctaw Nation, or that no notoriety was given to the said sale or that there was no opportunity for competitive bidding at said sale or that this opportunity was denied by the plaintiff for the purpose of acquiring said premises without the payment therefor of any reasonable sum of money, or in order to prevent bidding at said sale.

Wherefore, plaintiffs having fully answered the allegations of defendant's cross bill, he prays that he have and recover the premises sued for in his complaint.

W. H. ANSLEY,
By W. N. REDWINE, *Att'y.*

43 Endorsed: No. 1622. W. H. Ansley *vs.* J. W. McLoud. Replication. Filed at South McAlester, Ind. Ter., Dec. 14, 1901. E. J. Fannin, U. S. Clerk.

Plaintiff's Testimony.

(Caption Omitted.)

Interrogatories propounded to Edwin D. Chadick, witness for the plaintiff, taken in pursuance of a certain notice served upon defendants upon the 17th day of November, 1899, and upon defendant's counter notice, requiring said deposition to be taken upon written interrogatories.

1st Int'y. Please state your name and residence?

Answer to Interrogatory 1. Edwin Davis Chadick. My residence is Rockland county, New York.

2nd Int'y. Did you ever reside at South McAlester, in the Indian Territory, and if so, during what years did you so reside there?

Answer to Interrogatory 2. I was resident there from the year 1887 until 1892.

3rd Int'y. Were you ever connected with the Choctaw Coal & Railway Company, a corporation now operating a railroad in the Indian Territory, and certain other lines of business therein? If you say that you were connected with such railway company, please state the history of your connection therewith briefly, from the commencement of it to the termination of your connection therewith, if it is terminated, and if not, to the present time?

Answer to Interrogatory 3. I organized the Choctaw Coal & Railway Company, under the laws of the state of Minnesota, in the year 1886. I was associated at that time with parties in Minneapolis, Minnesota. The company was afterwards transferred, or a controlling interest therein, to a syndicate of Philadelphia capitalists. This transfer took place in the year 1889. I was from the time of its organization in Minnesota, down to and including February 8th, 1890, manager of said company. I was the owner of one-half the capital stock originally, and after the transfer to the Philadelphia parties, I owned over one-third of the capital stock. I was also the owner of the coal leases which were afterwards operated by that company, and transferred it to the company, together with the privileges of all kinds acquired by me in the Indian Territory.

On the 8th of February, 1891, the United States Court in the
44 Indian Territory appointed Mr. Francis I. Gowen and myself as receivers of said company, and I remained as such receiver until 1892—I cannot give the exact date—at which time I resigned, and the late J. W. Throckmorton, of Texas, was appointed in my place. I had entire charge of the company from the first, so far as the operations in the Indian Territory were concerned, subject to the board of directors, to-wit, the first board at Minneapolis, and the second board located in Philadelphia, after the transfer. I cannot give the names of the entire board of directors at Philadelphia, but the officers were Messrs. Charles Hartshorn, president; John N. M. Shimer, vice president; William C. Alderson, treasurer, and John Simms, secretary. I think Mr. Simms was secretary but

a short time, Mr. Frank T. Patterson being elected in his place shortly after the transfer. The Minneapolis owners and myself transferred of our holdings, to-wit, the total capital stock, $3,750,000, one share more than half, each of the Minneapolis parties and myself contributing in proportion to our holdings to the amount then transferred. Under the Philadelphia board, and by their direction, the coal property was prospected and examined, mines located, road surveyed and construction begun in September, 1889. I was in charge of all its work as manager. In 1890, owing to the failure of three trust companies in Philadelphia holding the notes of the company, it became financially embarrassed, and a petition was filed in the United States Court, for the appointment of a receiver. This was finally disposed of on the 8th day of February, as I remember it, 1891, by the appointment of Mr. Francis I. Gowen and myself as heretofore stated. My relations with the Company were harmonious and agreeable up to the 4th or 5th month of the receivership, when the Philadelphia owners, represented by Mr. Gowen, disagreed with me in regard to the policy to be pursued in the operation of the road and as to the payment of certain debts due by the Company to different parties in the Territory and elsewhere. There was considerable friction which finally resulted in my resignation and the appointment of Mr. Throckmorton. I have had no connection with the Company in any way since my resignation in 1892.

4th Int'y. State what your connection with such railway was on the 23rd day of October, 1890, and what the attitude of the business was of such company at such time.

45 Answer to Interrogatory 4. I was the manager of the company on that date and the line had then been completed between South McAlester and Wister Junction and was in operation; also we had opened coal mines at Alderson and Hartshorne and were mining and selling coal. Our general offices were located at South McAlester, as they had always been and the active operations of the road were conducted from that point.

5th Int'y. Were you acquainted with one Fritz Sittel and Malvina Settel, about October, 1890? If yea, state how long you had then been acquainted with them and where they resided, and of what blood they were.

Answer to Interrogatory 5. I was acquainted with them at the time, and had been since the year 1886. Malvina Sittel, the wife of Fritz Sittel, was a Choctaw Indian by blood. Fritz Sittel was a white man, who intermarried according to the laws and custom of the Choctaw Nation, and was a citizen of the Choctaw Nation by virtue of such marriage.

6th Int'y. Did you or not have any business transaction with the said Fritz and Malvina Sittel on or about the 23rd day of October, 1890? If yea, state what such transaction was.

Answer to Interrogatory 6. I entered into an agreement with Fritz and Malvina Sittel, on or about that date, of which agreement a copy is hereto attached and made a part of my answer to this question, marked Exhibit "A."

7th Int'y. If in answer to the above interrogatory you state that

on or about the 23rd day of October, 1890, Fritz and Malvina Sittel executed to you a mortgage or deed of trust upon certain land upon which the town of South McAlester, or a portion thereof, is now constructed, and upon certain houses thereon built or to be built, then please state fully the inducements that led up to such contract, that is to say, state what inducements actuated you and what inducements as far as you know, actuated the said Fritz and Malvina Sittel. Also, state whether or not you were acting in your own behalf, or in the interest of any other person or persons, and if so state who such other persons were, and whether or not you had had any agreement with any such person or persons prior to the execution of such deed of trust; if so, what such agreements were and in fact state everything that would bear upon the history of said deed of trust, or the reasons or inducements thereof.

46 Answer to Interrogatory 7. This instrument of writing was made in confirmation of a verbal agreement made over a year, or nearly two years previous,—or over a year at all events. This deed of trust was given for the purpose of enabling the Choctaw Coal & Railway Company to build houses off of its right of way in the town of South McAlester, Indian Territory, and for the purpose of securing the occupancy of the land on which said houses were built and to be built, and for the purpose of renting and leasing the same to its employes, who were without houses and could not, under the laws of the Territory at that time, build them themselves. The town of South McAlester stands upon a farm owned and occupied under the Indian law by Fritz and Malvina Sittel at the time we made the survey of the line and located the town. This verbal agreement was made immediately after the railway company had acquired the right of way through the farm of the said Sittels, and was made for the purposes I have specified, except with reference to the structure known as the Kali Inla building. The reason for this building was that a contest had occurred for the location of the United States court in the Indian Territory. Several towns were anxious to secure the court, and I promised, on behalf of the Choctaw Coal & Railway Company, and with the full knowledge and consent of every active official of that company, that if the United States government would locate the court at South McAlester the company would erect a stone building for the purposes of the court. Upon my recommendation it was afterwards decided to make this building large enough to use as a hotel, for the general offices of the company and for the offices of the United States court. These plans and specifications were drawn by Mr. Cox, at present in the employ of the Wiggins Ferry Company, in St. Louis, Mo. They were submitted to the Philadelphia officials of the road during a visit made by them to South McAlester. The work was not undertaken without their knowledge and consent. Afterwards, during the construction of the building, they also visited South McAlester and saw it in process of erection. The trustee of the first mortgage was the Girard Trust Company of Philadelphia and its president, Mr. Effingham B. Morris, visited South McAlester, saw the plans, and also saw the building while in process of erection, and no protest was made at

that time, and no hint that it was disapproved either by the directors of the trustee of the mortgage. By reading the deed of
47 trust, it can be readily seen what induced the Sittels to enter into such contract.

8th Int'y. Please state whether or not the houses described in said deed of trust, a copy of which is attached to these interrogatories, marked Exhibit "A," and made a part of these questions, had been constructed at the time said deed of trust was executed, or if they were constructed afterwards; and in either instance, please state who furnished the money for the construction of such houses, and the circumstances under which the same was furnished?

Answer to Interrogatory 8. I was not acting in my own behalf, but on behalf of and in the interest of the Choctaw Coal & Railway Company. The condition of affairs existing there rendered it simply impossible to transact the company's business unless the employes be properly houses. I represented this plainly and repeatedly in Philadelphia to the officials of the company, and they understood that the Choctaw Coal & Railway Company was the real beneficiary in this deed of trust for the reasons above stated; that they could not transact their business unless these houses were built, and upon my representations, they agreed to advance the money for the construction of these buildings, and did do so. Every dollar expended belonged to the Choctaw Coal & Railway Company, except that used by myself in the construction of my own house, known as the Edwin D. Chadick house, and the building known as the Shellenberger house. The deed of trust was executed as a protection to the Choctaw Coal & Railway Company as a recognition of the money advanced by them for the purpose of construction, and they were to have the control of these buildings and were to collect the rents, and did do so, and acted in every way as provided for in the mortgage. Prior to any of this work being done, I made a statement to Mr. William C. Alderson, the treasurer of the company, and also on another occasion to Mr. Alderson and Mr. Hartshorn together, in which the arrangements as to these buildings were clearly stated; also that I was to retain one half of the net income for my services in this connection, and it was understood that Hartshorn and Alderson should share equally with me. All these were verbal agreements made at interviews in Philadelphia and the Territory. They were at no time ignorant of what was going on in the Territory in regard to this matter. An account was opened upon the books of the company, known as the Townsite Account.
48 The monthly statements forwarded to Philadelphia showed all the expenditures made on this account, under the proper heading, Townsite Account. The vouchers were also sent there, or duplicates of them, and the matter was openly carried upon the books of the company as a part of the legitimate business. No difference was made in monthly statements between this and other accounts. It was treated exactly in the same way as the others. Mr. Samuel A. Bentley was the auditor of the company at that time, and the accounts were forwarded to Mr. William C. Alderson, treasurer of the company at Philadelphia. Payment for these accounts

was made by check upon Philadelphia banks, first the Keystone National, and afterwards the Tradesmen's National Bank. These checks were signed by myself as manager. No check was ever refused, and no question was ever raised regarding any check signed by me. During the construction of these buildings I was requested by the officers of the company to proceed to Washington and obtain, if possible, ratification by Congress of the coal leases which I had transferred to the company. I did this, and from June, 1890, until the 5th day of October, of the same year, I was in Washington. My place as manager was taken during that period by Mr. John N. M. Shimer, of Philadelphia, vice president of the company. Under him the work of construction was continued The rents were collected and the accounts kept in exactly the same manner as had been done while I was personally in charge of the work. The collections were made by Mr. Shimer's brother, Mr. Henry Shimer. I am not aware that Mr. Shimer ever protested or dissented in any way from the arrangements previously made by me. Even after the appointment of the receivers Mr. Gowen approved the work and continued it, as will be seen from the record of the case of Cooper *vs.* Choctaw Coal & Railway Company, which was carried to the Supreme Court of the United States and decided in favor of Cooper. Some of the houses had been constructed and others were in process of construction at the time of executing the deed of trust.

9th Int'y. If in answer to the above interrogatory you state that the money for the construction of the aforesaid houses was furnished by the Choctaw Coal & Railway Company, state whether or not the same was furnished with the knowledge and consent of the said Choctaw Coal and Railway Company, its managers and
49 agents, or whether the same was furnished without the knowledge and consent of the managers and agents of the railway company. If you say the same was furnished with the consent of the managers and agents of this company, then state specifically which of its managers and agents consented thereto.

Answer to Interrogatory 9. The money for all these buildings was, as previously stated, furnished by the Choctaw Coal & Railway Company. The money was furnished by the Choctaw Coal and Railway Company with the knowledge and consent of President Charles Hartshorne, and Messrs. William C. Alderson, Treasurer, and John N. M. Shimer, vice president, and other members of the board of directors who visited South McAlester during the process of construction and saw the buildings and knew the facts.

10th Int'y. State whether or not any account was kept of the money furnished for the construction of the houses aforesaid, and if so, where such account was kept. Also state when such account was made; whether it was made at the time the money was furnished, or made afterwards. Also state who kept such account, and the manner in which it was kept?

Answer to Interrogatory 10. I have already stated the method in which the account was kept, and by whom it was kept. Also that it was paid by monthly vouchers. I think nothing more is necessary in this connection.

11th Int'y. If in answer to the above interrogatory you state that an account of the money that went into said houses was kept upon the books of the Choctaw Coal and Railway Company by the employés of the Choctaw Coal and Railway Company, then state whether or not the same was privately or publicly kept, that is to say, whether it was kept as publicly as the other accounts of the Choctaw Coal and Railway Company. State whether the said account was known to the president and directors of the said Choctaw Coal and Railway Company?

Answer to Interrogatory 11. The accounts were kept openly upon the books of the company, as stated in answer to previous question.

12th Int'y. Was the money that was invested in the houses, etc., described in the aforesaid deed of trust, the property of the Choctaw Coal and Railway Company?

Answer to Interrogatory 12. It was.

13th Int'y. Was or not the same invested in the above houses with the knowledge and consent of the Choctaw Coal & Railway Company.

Answer to Interrogatory 13. It was, as I have more fully answered above.

14th Int'y. Was the said money belonging to the said Choctaw Coal & Railway Company invested in the aforesaid houses clandestinely? That is to say, without the knowledge and consent of the Choctaw Coal & Railway Company?

Answer to Interrogatory 14. It was not, but with the full knowledge and consent of the Choctaw Coal & Railway Company, as I have more fully answered in foregoing answers.

15th Int'y. For whose benefit were the aforesaid investments made?

Answer to Interrogatory 15. I have already answered this question. For the Choctaw Coal and Railway Company.

16th Int'y. If the money that was invested in the construction of the aforesaid houses was the property of the Choctaw Coal and Railway Company, state from what source the said money was obtained by the said company, if you know.

Answer to Interrogatory 16. This money was raised by giving the notes of the company to certain trust companies and firms in Philadelphia, secured by the first mortgage bonds as collateral.

17th Int'y. If the said money was diverted from the purposes for which it was originally intended and subscribed by the stockholders of the Choctaw Coal and Railway Company, then state by whom this diversion was made.

Answer to Interrogatory 17. The Philadelphia stockholders of the Choctaw Coal and Railway Company, so far as I know, never paid in any money for any purpose, except the original $75,000 for transfer of the stock. The other money used was borrowed as above stated.

18th Int'y. Is it or not true that the houses described in the aforesaid deed of trust were constructed with money belonging to the Choctaw Coal and Railway Company, and that said money was appropriated to that use and purpose by the managers and directors

of the Choctaw Coal and Railway Company and that they were fully advised of every investment and expenditure that was made in this behalf?

Answer to Interrogatory 18. The houses were constructed with the money belonging to the Choctaw Coal and Railway Com-
51 pany. The officers of the road were apprised of the expenditures and they were fully advised and vouchers covering such expenditures forwarded monthly for their inspection.

19th Int'y. State any other facts that you may know respecting the construction of the aforesaid houses and the investments made by the Choctaw Coal and Railway Company in houses at South McAlester, off of the right of way of the Choctaw Coal and Railway Company that may occur to you, which have not been drawn out by the preceding interrogatories. In answer to the above interrogatories, you are instructed to attach to your respective answers any letters or papers or memoranda of any kind that you have in your possession, which will tend to illustrate the subject matter of your answers or corroborate the same, identify each one so attached.

Answer to Interrogatory 19. Nothing further occurs to me more than I have already stated that in my judgment would have any bearing upon the matters in controversy. I attach hereto and mark "Exhibit B" the only paper in my possession, viz.: The prospectus of the Philadelphia and Western Improvement Company, organized for the purpose of reorganizing the Choctaw Coal and Railway Company and completing its line.

(Exhibit "A" to interrogatories is heretofore copied at page 22 of this transcript.)

Cross Interrogatories.

Cross Interrogatory No. 1. Is it not a fact that the deed of trust referred to was executed without the knowledge or consent of the beneficiaries in said deed, and is it not a fact that the beneficiaries in said deed, Hartshorne and Alderson, did not discover the existence of said deed of trust until a long time after the same had been executed?

Answer to Cross Interrogatory 1. It is not a fact that Hartshorne and Alderson did not know of the execution of the deed of trust. They were in full possession of all the facts, and my instructions to my secretary and the notary were to forward this document to them as soon as executed and to the best of my knowledge it was done, although I left for St. Louis the evening it was executed and cannot say positively on that point.

Cross Interrogatory No. 2. Is it not a fact that the United States Court for the Indian Territory, in a suit brought by you against the receivers of the Choctaw Coal and Railway Company, held
52 after a full hearing, and after you had testified in the case, that the deed of trust executed by the Sittels and providing for the payment to you of one-half the receipts from the improvements was inconsistent with the obligations and duties you owed to

the Choctaw Coal and Railway Company as its manager, and is it not a fact that you were denied a recovery in that case on this account?

Answer to Cross Interrogatory 2. I have no recollection of giving any testimony in any such case. As to the remainder of the question the records of the United States Court in the Indian Territory will show.

Cross Interrogatory No. 3. Is it not a fact that the erection of the buildings off the company's right of way was a private enterprise of your own, entered into with the Sittels, and is it not a fact that the directors of the Choctaw Coal and Railway Company did not know anything of the investment made by you in these improvements until long after the investment was made.

Answer to Cross Interrogatory 3. It is not a fact. The officers and directors of the Choctaw Coal & Railway Company knew every fact, and the officials had seen the vouchers each month for the payments made on this account and had paid the checks drawn specifically against the townsite account and a number of the officials and directors had visited South McAlester and had seen these houses in process of construction. There was nothing clandestine or hidden in the matter, and nothing hidden or attempted to be hidden from them.

Cross Interrogatory No. 4. Is it not a fact that you advanced $85,957.04 of the Choctaw Coal and Railway Company's money to be used in the erection of the houses mentioned in the deed of trust, and is it not a fact that no part of said money was advanced by Hartshorne and Alderson, the beneficiaries in said deed of trust, and is it not a fact that neither Hartshorne nor Alderson knew of said deed of trust until long after its execution?

Answer to Cross Interrogatory 4. I cannot be certain as to the exact amount advanced. The account upon the books of the company will show that. None of the money was advanced by Messrs. Hartshorne and Alderson, but it was advanced by the Choctaw Coal and Railway Company, and paid by William C. Alderson, treasurer of the company, and the vouchers sent to him monthly. It is not a fact that they were not aware of the execution of this deed of
53 trust until long after. They knew every fact concerning this transaction in the order of occurrence. It is not a fact that I personally advanced any money for these purposes.

Cross Interrogatory No. 5. Is it not a fact that the written agreement called the deed of trust, entered into between you and Fritz Sittel and Malvina Sittel, was simply a pretext to cover and protect the investment which you had made without the knowledge of Hartshorne and Alderson, and is it not a fact that the Sittels were not to derive any benefit from said trust deed, or from the investment made thereunder?

Answer to Cross Interrogatory 5. The deed of trust was not made to cover any private arrangement between the Sittels and myself. That instrument recites all the facts connected with it. It was not made to cover an investment made without the knowledge of Harts-

horne or Alderson, and they knew as much concerning that investment as myself, except possibly as to details of construction.

Cross Interrogatory No. 6. Is it not a fact that the deed of trust above mentioned was executed by the Sittels in the manner in which it was executed for the purpose of protecting the investment made by you, and is it not a fact that Fritz Sittel was left in the apparent possession of said property in order that the same might be held through him as an Indian?

Answer to Cross Interrogatory 6. I repeat that the document speaks for itself on these points, and the matters and things stated therein are true.

Cross Interrogatory No. 7. Is it not a fact that Fritz Sittel and his wife had no interest in the improvements covered by said deed of trust, and is it not a fact that they were used by you as mere figureheads to protect the investment?

Answer to Cross Interrogatory 7. Sittel and wife did not invest the money, but it was advanced by the Choctaw Coal and Railway Company, with its full knowledge and consent, and for the purposes above stated.

Cross Interrogatory No. 8. Please state why the following clause, to-wit: "And nothing in this deed shall be construed to cover any land, or any interest in land," was placed in said deed of trust?

Answer to Cross Interrogatory 8. For the reason that the Five Civilized Tribes were at that time holding their lands in common, and that no individual Indian had any right to convey title
54 to the surface or in fee simple.

Cross Interrogatory No. 9. Who is present while these interrogatories are being propounded to you and answered by you? In this connection please state if you have had any correspondence with the attorneys in this case, and if so, please be kind enough to attach hereto a copy of their letters to you, and a copy of your answers to said letters?

Answer to Cross Interrogatory 9. I decline to answer this question, except as to who is present. There is no one present except the notary public and myself.

Cross Interrogatory No. 10. Is it not a fact that you feel very unkindly toward the management of the Choctaw Coal and Railway Company, now the Choctaw, Oklahoma and Gulf Railroad Company, and have you not considerable feeling against said company?

Answer to Cross Interrogatory 10. I have been unfairly treated by the officials of both these companies, but I have answered these interrogatories giving the facts as they exist, without regard to my personal preferences or prejudices.

(Signed) EDWIN D. CHADICK.

(Exhibit "A" to this deposition is heretofore copied in this transcript, at page 22.)

Endorsed: 1622. W. H. Ansley *vs.* F. I. Gowen, *et al.* Opened, Published and Filed Dec. 20, 1899. E. J. Fannin, Clerk, By I. M. Dodge, D. C.

(Caption Omitted.)

C. S. JONES, being duly sworn, deposes and says:

My name is C. S. Jones. I have lived in South McAlester, Indian Territory, since 1889. Am 51 years of age. I am engaged in the grocery business. In 1889 and 1890, and probably in 1891, I was foreman of the building department of the Choctaw Coal and Railway Company. I was employed by Mr. Edwin Chadick. He was general manager of the Choctaw Coal and Railway Company at that time. In the fall of 1889, I worked upon which is called the Kali Inla building, in South McAlester, which was being built by the Choctaw Coal and Railway Company. That building is some two hundred feet from the right of way of the Choctaw Coal and Railway Company (now the Choctaw, Oklahoma and Gulf Railroad Company).

I also managed the building of two houses, one known as the Bradford property, and one known as the Hollow house, and various other houses. These buildings were put up by the Choctaw Coal and Railway Company. I know the buildings known as the Argo house, the Zike house, the Holden house, Huff house, the Knapp house, Stuart house. All these buildings were built by the Choctaw Coal and Railway Company, and off of said company's right of way. During the erection of these buildings the officials of the Choctaw Coal and Railway Company visited South McAlester at various times. Mr. Hartshorne, Mr. Alderson and Mr. Shimer, and others, inspected the Kali Inla building while I was at work upon it. Mr. Shimer, vice president of the Choctaw Coal and Railway Company was in South McAlester for four months during Mr Chadick's absence, and while here he superintended the construction of these buildings, and also performed all other duties which were ordinarily performed by Mr. Chadick as general manager of the Choctaw Coal and Railway Company.

During this time I was keeping the house which was used for the benefit of the officials of the company, and when these officials came to South McAlester they always stopped at my place. During the visits of the officials on various occasions, I heard them talk about and discuss the buildings which were then being erected by the company, among which were the Kali Inla building, and the others heretofore referred to. They spoke approvingly of the construction of these buildings, and their effect in building a town at this point, and in speaking of it they would say "We will have a town of our own."

While John N. M. Shimer, vice president of the Choctaw Coal and Railway Company, was in South McAlester in the absence of Mr. Chadick, acting as general manager, Charles Hartshorne and Wm. C. Alderson were also here, and I heard Shimer discuss these matters with them, as above stated. Shimer also gave me orders directly about the construction of the buildings, and carried forward the work of construction just as Chadick had been doing.

I received my pay from Mr. Samuel A. Bentley, who was the auditor of the Choctaw Coal and Railway Company at that time. I

kept the time of all persons and carpenters, painters, masons and laborers who were working under me on the buildings heretofore mentioned, and their time was handed in by me and they re-
56 ceived their pay from Mr. Bentley.

During the visits of the officials named above, as stated by me, they never said anything indicating any dissatisfaction with the construction of these buildings by Chadick, but on the contrary, expressed themselves as pleased with his management, and the work done in the construction of these buildings.

As stated above, I received my pay direct from Samuel A. Bentley, general auditor of the company. That was done in this way; vouchers made up and sent to Philadelphia, and the money was sent *to* Philadelphia to McAlester, Indian Territory. This was called "Old Town" to distinguish it from the new town being built by the railway company, and is about a mile and a half north of the new town. Mr. Bentley had J. W. Ellis, captain of Indian police, with guards, to go to McAlester and bring over the money to pay off the workmen.

I was acquainted with Mr. Fritz Sittel, who lived at McAlester, (Old Town). He was about these buildings nearly every day while they were being erected, but he never made any claims that they were being erected for him, nor did he attempt in any way to direct the course of construction of them.

I continued in the employ of the Choctaw Coal and Railway Company until it went into the hands of a receiver. At the time said company went into the hands of a receiver, the Kali Inla building was not completed. The receivers of said company were Messrs. Francis I. Gowen and Edwin D. Chadick. After the receivers were appointed, the Kali Inla building was completed under their direction.

Mr. H. W. Cox surveyed and platted the town of South McAlester for the Choctaw Coal and Railway Company. I have seen the map or plat made by Mr. Cox.

Ques. Mr. Jones, is this a correct copy of part of the map of South McAlester made by Mr. Cox for the Choctaw Coal and Railway Company, describing the buildings heretofore testified to by you?

A. Yes sir, it is.

Ques. Will you please attach that map to your deposition, and mark it "Exhibit "A"?

Ans. I will.

(Witness attaches map referred to, and marks it "Exhibit A.")

I had authority from the company to purchase goods needed in the building department of the company.

57 (Witness attaches a copy of such authority to this deposition, and marks it "Exhibit B.")

C. S. JONES.

EXHIBIT A.

EXHIBIT "B."

Manager's Office, Choctaw Coal and Railway Company.

Kali Inla.
Trade Mark.

McALESTER, IND. TER., *August* 31*st*, '89.

To Whom It May Concern:

This is to certify that Mr. C. S. Jones has authority to purchase goods for account this company to be shipped to this point for us and charged to our account.

(Signed) E. D. CHADICK, *Manager.*
WALTER C. SMITH, *Sec'y.*

Endorsed: No. 1622. W. H. Ansley, Pl't'ff, *vs.* Francis I. Gowen, *et al.*, Def'ts. Deposition of C. S. Jones. Filed Jun- 6, 1901. E. J. Fannin, U. S. Clerk, Cent. Dist., I. T.

(Caption Omitted.)

FRITZ SITTEL, being duly sworn, deposes and says:

My name is Fritz Sittel, and am 37 years of age, and am intermarried citizen of the Choctaw Nation, Indian Territory. I moved to South McAlester in the spring of 1886, and lived continuously in said town until the year 1897.

I am acquainted with Mr. Chadick, who was general manager of the Choctaw Coal and Railway Company. Said railroad was built from Wister to South McAlester in 1890-1. At that time, I was tie contractor for the Choctaw Coal and Railway Company. I was also in the mercantile business at South McAlester at that time. The Choctaw Coal and Railway Company had its general offices in South McAlester from the time the road was commenced until the year 1899 or 1900.

I know where the Kali Inla building is situated. It is off the company's right of way. It was built in 1890 or 1891 by the Choctaw Coal and Railway Company. I did not furnish any money for the construction of this building, neither did I ever claim, nor do I now, any interest in said building. During the construction of this building, Mr. John Shimer, the vice president of the Choctaw Coal and Railway Company, at that time was here in South Mc-
58 Alester looking after the affairs of the company, acting as general manager of the Choctaw Coal and Railway Company during Mr. Chadick's absence, for about four months.

During the construction of the Kali Inla building Mr. Hartshorne, Mr. Alderson, visited South McAlester and saw the building under construction, and while here I heard them talking in regard to the building, and in the conversation I heard them say that they were going to use the building for general offices for the company, for a hotel, and a court house.

On October 23, 1890, my wife and I executed a deed of trust to Edwin D. Chadick, as trustee, on certain property in the town of South McAlester, and the Kali Inla building was included in said deed of trust; but the reason said building was put in said deed of trust was that the company might be able to represent to the Choctaw authorities that the building was held by me, and thus avoid the confiscation of the same, which the Choctaw authorities were threatening on account of the company having acquired this and other property off their right of way. This arrangement was made at the suggestion and upon the request of the officers of the company, and was made solely for the purposes above stated.

I had, some months prior to the execution of this mortgage, or deed of trust, entered into a contract with the company, affecting certain other property, and when the mortgage or deed of trust came to be made, the Kali Inla building was included in it at the suggestion and upon the request of the officers of the company, only for the reasons above stated.

The building was designed by W. H. Cox, a draftsman for the Choctaw Coal and Railway Company, and the plans were made in the company's general offices. The stone work was begun by W. H. Cooper, who was in the employ of the company, who had been doing other work for the company at various other places and upon other buildings in South McAlester. He had been in the employ of the company and had been paid by the company for a year or more before the Kali Inla building was begun. The carpenter work was done by W. H. Cooper and Chris Jones, as foreman. Chris Jones had been in the employ of the company as foreman of carpenter work for something over a year, and had erected various other buildings for the company and had done various other work for the
59 company at South McAlester and elsewhere during that time.

South McAlester was laid off into streets, alleys and blocks by said railway company. A plat was made of the town by Mr. W. H. Cox, who platted the same for the company.

FRITZ SITTEL.

Endorsed: 1622. W. H. Ansley *vs.* J. W. McLoud, *et al.* Deposition of Fritz Sittel. Filed Dec. 17, 1901. E. J. Fannin, U. S. Clerk, Cent. Dist., I. T.

(Caption Omitted.)

JONAS PEABODY, *who* after being duly sworn, deposes and says: I am forty-six years of age, and a citizen of the Choctaw Nation by blood. I was duly elected and commissioned sheriff of Tobucksey county, Choctaw Nation in the year 1895. William Ansley was appointed and commissioned by me as deputy sheriff of said county and nation with the same authority and power that I had as such sheriff.

Q. State whether or not you were ever served with a notice notifying you of the application for an injunction in the case of E. D.

Chadick, trustee, plaintiff, *versus* Francis I. Gowen and J. W. Throckmorton, receivers of the Choctaw Coal and Railway Company, Dr. E. N. Allen, Rev. J. H. Milbourn and Judge Ernest, defendants, J. W. McLoud, trustee intervener, case number 969, to restrain you or your deputies from selling the Kali Inla building, and other buildings, which had been advertised by you as sheriff of Tobucksey county, Choctaw Nation, to be sold on the 24th day of June, 1895?

A. No, I never had any notice of the application for an injunction as above stated, either by service of process, constructive or otherwise.

Q. State whether or not you ever had any notice of an application to restrain you or your deputies from selling the property sued for in plaintiff's complaint.

A. I never had any notice of an application for an injunction, and I never knew that there had been an injunction granted until after the sale of said property, sued for in plaintiff's complaint.

JONAS PEABODY.

60 WILLIAM ANSLEY, being duly sworn, deposes and says:

I am forty nine years old, and a citizen of the Choctaw Nation, and live and reside in McAlester, Indian Territory. I was duly appointed and acting deputy sheriff of Tobucksey county, Choctaw Nation in the year 1895. Jonas Peabody was sheriff of said county, and I was appointed and commissioned by him as such deputy sheriff. I was a regular deputy sheriff.

In the years 1889, 1890, 1891, 1892 and 1893, the Choctaw Coal and Railway Company built a large number of houses in South McAlester off its right of way, among which is a building known as the Kali Inla building, and other building-, which are set out in plaintiff's complaint. While I was acting as deputy sheriff, I wrote to the governor of the Choctaw Nation, and made a report in regard to the buildings aforesaid being built by the Choctaw Coal and Railway Company in South McAlester off of its right of way, and the same being controlled by said Choctaw Coal and Railway Company.

I was directed by the Chief of the Choctaw Nation to proceed according to law to dispose of the buildings which had been built by the Choctaw Coal and Railway Company off of its right of way. Under said directions I advertised all the buildings sued for in plaintiff's complaint according to law and sold them to citizens of the Choctaw Nation, W. H. Ansley, E. T. Richards and James Pusley became the purchasers, being the highest and best bidders to all the buildings sued for by plaintiff. At the sale of the buildings which I have described there was ten or fifteen persons present and several bidders. The building did not sell for a great deal for the reason that the Choctaw Coal and Railway Company was in possession of the Kali Inla building, leasing the same out to non-citizens and collecting rents therefrom, and were also in possession of the other buildings which I advertised and did sell and bidders

knowing that it would require litigation to get possession of said property, they did not bid very high.

At said sale W. H. Ansley, a citizen of the Choctaw nation, became the purchaser, he being the highest and best bidder, of the following described property to-wit:

One house known as the Kali Inla hotel building, one house known as the H. G. Knapp residence, one house known as
61 the J. M. Zike residence, one house known as the Hoff residence, one house known as the J. F. Holden residence, for which he paid $270.00, for all of the above described property. I accepted notes *to* the sheriff and his successor in office for said amount, conditioned that the same be paid as soon as the purchaser was put in possession by the nation, or obtained possession otherwise, which notes have been turned over to the present sheriff of Tobucksey county. Immediately after the sale I reported my action to the Chief of the Choctaw Nation.

(Whereupon the defendant- objected to that part of said deposition which is as follows:

"And the Chief ratified my action as to the sale and payments of said property and instructed me to proceed at once and employ attorneys to assist me in get- possession of the property for the purchasers, and I at once employed attorneys to assist the plaintiff, W. H. Ansley, in obtaining possession of the property sold by me as Sheriff. Moseley & Smith, of Denison, Texas, a firm of lawyers, and Cole & Redwine, attorneys at South McAlester, were employed by the Chief of the Choctaw Nation to assist the plaintiff in obtaining possession of said property. In October, 1895, the Choctaw Council passed a special act, appropriating $1,500.00 to employ attorneys to represent the Choctaw Nation and to assist the plaintiff in obtaining possession of the property aforesaid. In the December following contracts employing the aforesaid lawyers were signed by Jeff Gardner, Chief of the Choctaw Nation and all of my acts as deputy sheriff aforesaid as to the sale and payments of the purchase price of the aforesaid property was accepted and ratified by the Choctaw Nation."

Which objection was by the court sustained, and said part of said deposition stricken out, to which ruling of the court the plaintiff excepted.)

That E. T. Richards and James Pusley became the puschasers of all other property described in plaintiff's complaint, except what W. H. Ansley bought as heretofore described, and payments were made for the same in the same way that W. H. Ansley paid for his.

Whereupon the following portion of said deposition was objected to, to-wit:

"Which payments were accepted and ratified by the Choctaw Nation."

Which objection was by the court sustained and said part of soid deposition stricken out, to which ruling of the court the plaintiff excepted.)

62 WM. ANSLEY.

Mr. FRITZ SITTEL, being duly sworn, deposes and says:

I live and reside fifteen miles northwest of South McAlester. I am a citizen of the Choctaw Nation by intermarriage.

Q. Mr. Sittel, in the case number 969, on the docket in the United States Court at South McAlester, entitled Edwin D. Chadick, trustee, *versus* Receivers of the Choctaw Coal and Railway Company, state whether or not you were ever served with process in said case?

A. Never was.

Q. State whether or not you ever appeared, or entered your appearance in any way in said cause?

A. No.

Q. State whether or not your wife, Mrs. Malvina Sittel, was ever summonsed to appear in said cause?

A. She never did.

Q. State whether or not she entered her appearance in any way?

A. No.

Q. State whether or not your wife or either of you were parties to said suit?

A. No sir, neither of us were parties to said suit.

Q. Do you remember the time that the Kali Inla building in South McAlester, together with other property, was sold by William Ansley, sheriff of Tobucksey county, Choctaw Nation?

A. Yes sir, I remember the time.

Q. State whether or not you at that time made any protest against the sale of said property, or at any other time?

A. I made no protest against the sale of the Kali Inla building, for I had no interest in the same, either in law or equity, and never did have.

Q. You may state whether or not you ever claimed any interest in the Kali Inla building?

A. No sir.

FRITZ SITTEL.

W. H. ANSLEY, who after being sworn, deposes and says:

I am over twenty-one years of age, and was of lawful age at the time that I bought the property sued for in my complaint.

Myself, E. T. Richards and James Pusley became the
63 purchasers of all the property sued for by me, which has been heretofore described in my former deposition. I purchased from Pusley and Richards the property which they bought at the sheriff's sale, paying them one dollar in cash and assumed the debt they were due the Choctaw Nation. The reason that the money was not paid at the time of the sale was the houses purchased by me and others were being held by the Choctaw Coal and Railway Company and I was informed that it would take litigation to obtain possession. I then executed my note, as heretofore described, being then and there ready and willing to pay the cash for the purchase of said property as soon as I could obtain possession. I have always and am now ready to pay the money for said property when I obtain possession of the same.

W. H. ANSLEY.

Endorsed: No. 1622. W. H. Ansley, *vs.* Francis I. Gowen, *et al.* Depositions. Filed Mar. 14, 1902. E. J. Fannin, U. S. Clerk, Cent. Dist. I. T.

WILLIAM ANSLEY, a witness for and on behalf of plaintiff, being first duly sworn, testified as follows:

Direct examination by W. N. REDWINE:

Q. State your name, Mr. Ansley?
A. William Ansley.
Q. I will ask you what official position did you hold in the year 1895, if any?
A. I was deputy sheriff for Jonas Peabody, of Tobucksey county, Choctaw Nation.
Q. Did you, as such deputy sheriff, advertise the property in controversy for sale and give legal notice under the Choctaw law?
A. I did.
Q. Did you sell the property in controversy pursuant to that notice?
A. Yes sir.
Q. What time of the day did you sell the property?
A. It was between nine and ten o'clock in the morning.
Q. Where was the property advertised to be sold, and where was it sold?
A. At the court house door in McAlester, Tobucksey
64 county.
Q. Before the sale of that property state whether or not you had any notice, constructive or otherwise, of an injunction?
A. I had none.
Q. State whether or not there was a notice of injunction served upon you after the sale?
A. Yes sir, there was.
Q. Who served the notice of injunction?
A. Jackson Ellis.
Q. What time of the day were you served with the notice of injunction?
A. It was between ten and eleven in the forenoon.
Q. Do you know the style of the parties?
A. Do not remember the style.
Q. Where were you when the injunction was served?
A. I was home, at my house.

It is admitted that the injunction above referred to was in the case of Francis I. Gowen and J. W. Throckmorton, Receivers of the Choctaw Coal and Railway Company and Dr. E. N. Allen, J. H. Milburn, Judge Earnest, and J. W. McLoud, Intervenor, against William Ansley, deputy sheriff of Tobucksey county.

Q. At the time Jackson Ellis served the injunction upon you did you state to him that you expected an injunction to be served upon you?
A. No sir.

Q. Did you tell him that you had notice that an injunction would be served upon you?
A. No sir.

It is agreed that the foregoing depositions, which have been taken in shorthand, may be transcribed in long hand and that the signature of the witnesses thereto are waived, and that all objections to formalities in the taking and returning of these depositions are waived, and all objections as to competency and relevancy are saved.

Endorsed: No. 1622. W. H. Ansley, Plaintiff, *vs.* Francis I. Gowen, Rec'r, *et al.*, D'f'ts. In the United States Court, South McAlester, Indian Ter. Depositions of W. H. Ansley and William Ansley. Filed Mar. 10, 1902. E. J. Fannin, U. S. Clerk, Cent. Dist., I. T.

65 In the United States Court for the Central District of the Indian Territory, at South McAlester.

W. H. ANSLEY, Plaintiff,
vs.
FRANCIS I. GOWEN ET AL., Defendants.

It is agreed by and between the parties plaintiff and defendant herein that these depositions may be taken in the office of Stuart & Gordon, in the city of South McAlester, I. T., and that all formalities in the taking of said depositions and return of the same are hereby waived. This 3rd day of March, 1902.

J. W. ELLIS, a witness on behalf of plaintiff, after being duly sworn, testified as follows:

Direct examination by W. N. REDWINE:

Q. How do you sign your name, Mr. Ellis?
A. J. W.
Q. What is your age, Mr. Ellis?
A. Forty two.
Q. What official position do you hold now, if any?
A. Captain of the Indian Police.
Q. What official position did you hold in the year 1895, if any?
A. I was sheriff, deputy marshal, and special officer for the railroad company.
Q. What railroad company were you special officer for?
A. Choctaw.
Q. What were your duties as special officer for the Choctaw Coal and Railway Co?
A. To look after their interests, protect their property and so on.
Q. I will ask you whether or not you served a notice of injunction on William Ansley, Sheriff of Tobucksey County, Choctaw Nation, on the 24th day of June, 1895, the day on which the Kali Inla building and other property had been advertised for sale?
A. I did.

Q. I will ask you about what hour of the day, if you remember, that you served the notice of the injunction?

A. I do not really remember; in the neighborhood of nine in the morning.

Q. After nine?

A. I could not say positively.

Q. I will ask you whether or not you were informed at the time you served the notice of injunction that the sale of the property had been made?

A. Yes sir.

Q. How long were you informed that the sale had been made before you served the notice of injunction?

A. I do not really know that I was told how long. I got the impression it had not been long.

Q. You were informed that the sale was made?

66 A. Yes sir.

Q. Where was Mr. Ansley when you served the injunction on him, the deputy sheriff?

A. In Old McAlester.

(Foregoing testimony objected to by defendant.)

Cross-examination by C. B. STUART:

Q. Mr. Ellis, do you know whether Mr. Ansley, at the time you served this notice on him, knew that an application had been made for an injunction?

A. Yes sir.

Q. Did he know that an application had been made to enjoin him from selling the property?

A. He said that he knew that an injunction would be served upon him, in talking after I got there.

By Mr. REDWINE:

Q. Did he state that he had any notice of the application for an injunction?

A. No sir.

Q. The only thing, then, he said, was he knew notice of the injunction would be served upon him?

A. Yes sir.

It is agreed that these depositions taken in shorthand may be transcribed in long hand and that the witness, Ellis, need not sign the same.

(Endorsed:) No. 1622. W. H. Ansley, Plaintiff, *vs.* Francis I. Gowen, Defendant. In the United States Court at South McAlester, Indian Territory. Deposition of J. W. Ellis. Filed May 21, 1902. E. J. Fannin, U. S. Clerk, Central District, I. T.

(Caption Omitted.)

Deposition of W. H. Ansley, a witness for and on behalf of the defendants, taken at the office of Stuart & Gordon, South McAlester, I. T., on the 8th day of March, 1902, before T. D. Taylor, Notary Public.

W. H. ANSLEY, being first duly sworn, testified as follows:

Direct examination by C. B. STUART:

Q. What is your name?
A. W. H. Ansley.
Q. Where do you reside?
A. McAlester, Indian Territory.
Q. What relation are you to William Ansley, deputy sheriff for the Choctaw Nation?
67 A. Son.
Q. You, I believe, were one of the purchasers at the sale in old McAlester, of the buildings in controversy here?
A. Yes, sir.
Q. When was the first you heard that this property was to be sold, how long before the sale?
A. I was an officer of the county at that time, and knew that the property was to be sold.
Q. You knew then, prior to the time of the actual sale by William Ansley, the deputy sheriff, that the property in controversy would be sold?
A. Yes, sir.
Q. Were you present at the sale?
A. Yes, sir.
Q. Who else was present there at the sale?
A. Well, E. T. Richards, James Pusley, Wash Wade, and a number of others, I do not remember.
Q. How many people, in your judgment, were present at the sale?
A. About a dozen.
Q. The property was sold at old McAlester?
A. Yes, sir, at the court house.
Q. Who is E. T. Richards?
A. A brother-in-law of mine.
Q. What relation is James Pusley to you, if any?
A. None.
Q. Did you know at the time you purchased, the location of what is known as the Kali Inla building?
A. Yes sir.
Q. What was the Kali Inla building worth, that is, what was its market value at the time you made the purchase, in your judgment?
A. About $30,000 or $40,000.
Q. You paid, at that sale, for the Kali Inla building, $200.00, did you not?
A. No, I think it was $125.00.
Q. The Kali Inla was all you purchased?

A. No, I bought the Knapp house, one known as the Holden property, one known as the Zike property, and one known as the Huff property.

Q. What in the aggregate did you pay for all this property?

A. $270.00.

Q. Who became the purchasers of the other property?

A. E. T. Richards purchased the Bradford house, the Argo
68 house, and James Pusley the Stewart and H. Holler houses.

Q. Very soon after the purchase by Pusley and E. T. Richards they conveyed the property purchased by them at that sale to you did they not?

A. Yes sir.

Q. How much did you pay for the property you purchased and how did you pay for it?

A. From the Nation you mean?

Q. From Ansley. I mean how was the money you paid for the houses you purchased at that sale paid?

A. I paid for those houses by a note, with the understanding that I was to pay the note when I was put in possession by the Nation. They were to put me in possession and I was to pay them when they did. I gave my note for that.

Q. Then up to this time you have paid no cash for this property?

A. The Nation has not put me in possession.

Q. You have paid no cash? You have paid nothing except giving your note?

A. That is all.

Q. Do you now whether Richards and Pusley paid anything in cash?

A. No, gave their notes, same as I did.

Q. What did you pay to Pusley and Richards for conveying their purchasers to you?

A. I think the consideration was $1.00, with the understanding—I do not remember exactly—that I was to do what was right about it, because they knew it was a law suit and I was to pay them whenever it was settled.

Q. Was any especial price agreed upon between you as to what you was to pay?

A. None.

Q. You simply were to do what was right with them?

A. Yes sir.

(It is agreed that all objections to this testimony as to relevancy and competency are saved by either party to this cause, and that the same may be presented to the court at any time before or at the hearing of this case.)

In the United States Court for the Central District of the Indian Territory.

W. H. ANSLEY
vs.
FRANCIS I. GOWEN ET AL.

Agreement.

69 It is hereby agreed by and between parties hereto, that the following laws of the Choctaw Nation, Acts of the Congress of the United States, decrees and orders of courts, and files and exhibits were introduced in evidence on the trial of the above cause, and that the same are to be filed and made a part of the record in this cause, and by the clerk included in the transcript of said cause.

The plaintiff introduced on his behalf, the following:

Section 1, of An Act of Congress, entitled An Act to authorize purchasers of the property and franchises of the Choctaw Coal and Railway Company to organize a corporation and to confer upon the same all the powers, privileges and franchises vested in that company.

An Act of the General Council of the Choctaw Nation, approved October 14, 1890:

Section 10 of An Act of Congress, entitled "An Act to authorize the Choctaw Coal and Railway Company to construct and operate a railway through the Indian Territory and for other purposes."

The mortgage from Fritz Sittel and Malvina Sittel to Edwin D. Chadick, dated October 23, 1890:

Deeds of Jonas Peabody, sheriff, of date June 24, 1895, to W. H. Ansley, James Pusley and E. T. Richards to the property in controversy.

Deeds of E. T. Richards and James Pusley to W. H. Ansley, to a portion of the property in controversy.

An Act of the general council of the Choctaw Nation, entitled "Non Citizen Improvement."

An Act of the General Council of the Choctaw Nation, entitled "An Act authorizing the principal Chief to Employ Counsel," approved October 30, 1895.

And the defendant on the trial of said cause, introduced the following:

Report of sale of property of Choctaw Coal and Railway Company by Yancey Lewis, Special Master Commissioner, in case of Langhorne Wister, *et al.*, *v.* Choctaw Coal and Railway Company.

Final order of Court discharging receiver, in case of Langhorne Wister, *et al.*, *v.* Choctaw Coal and Railway Company.

Order of injuction in case of E. D. Chadick, Trustee, *vs.* Francis I. Gowen, *et al.*

The decree of the United States confirming report of special master commissioner in case of Langhorne Wister, *et al.*, *vs.* Choctaw Coal and Railway Company.

70 Order of court, appointing special master commissioner, and ordering sale of property of Choctaw Coal and Railway

Company, in case of Langhorne Wister, *et al.*, *v.* Choctaw Coal and Railway Co.

Supplemental Report of Special Master Commissioner, in case of Langhorne Wister, *et al. v.* Choctaw Coal and Railway Company.

Final decree, confirming sale of property by special master commissioner, in case of Langhorne Wister, *et al. v.* Choctaw Coal and Railway Company.

The report of the Special Master in the case of Edwin D. Chadick *v.* Choctaw Coal and Railway Company.

The decree of the court in case of Edwin D. Chadick *v.* Choctaw Coal and Railway Company.

It is further agreed that Exhibit A to the deposition of C. S. Jones, may be omitted from the transcript.

W. N. REDWINE,
Att'y for Plaintiff.
C. B. STUART,
Att'y for Appellee.

An Act to authorize purchasers of the property and franchises of the Choctaw Coal and Railway Company to organize a corporation and to confer upon the same all the powers, privileges and franchises vested in that Company.

Whereas, the Choctaw Coal and Railway Company, a corporation created under and by virtue of the laws of the State of Minnesota, and now doing business in the Indian Territory, and Oklahoma Territory, under *the* by virtue of certain acts of Congress, empowering it so to do, is insolvent and in order to enable the creditors and stockholders of the same to reorganize said company in such a way as to secure the completion of the railroad authorized to be constructed by said company, a sale of its property and franchises is necessary; Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in congress assembled, That the purchasers of the rights of way, railroads, mines, coal leasehold estates and other property and the franchises of the said Choctaw Coal and Railway Company at any sale made under or by virtue of any process or decree of any court having jurisdiction thereof shall be and are hereby constituted a corporation and shall be vested with all the right, title, interest, property possession, claim and demand in law and equity of, in and to such rights of way, railroads, mines, coal leasehold estates and property of the said Choctaw Coal and
71 Railway Company, and with all the rights, powers, immunities, privileges and franchises which have been heretofore granted to or conferred upon said company by any act or acts of Congress, or which it possesses by virtue of its charter under the laws of Minnesota; Provided, That such new corporation shall not have the right to acquire and hold any houses or buildings at South McAlester situate off the right of way and depot grounds of said Choctaw Coal and Railway Company.

(It is agreed that the remainder of said act need not be copied.)

An act of the General Council of the Choctaw Nation, approved October 14, 1890, as follows:

(This act appears in the second amended complaint, and may be considered as introduced in evidence.)

(See transcript, page 8.)

An act of Congress, entitled "An Act to authorize the Choctaw Coal and Railway Company to construct and operate a railway through the Indian Territory, and for other purposes," as follows:

(It is agreed that all of said act except Section 10 may be omitted.)

(Section 10 of said act is made a part of plaintiff's second amended complaint, and it is agreed that the same may be considered as introduced.)

(See transcript page 16.)

Mortgage from Fritz Sittel and Malvina Sittel to Edwin D. Chadick, dated October 23rd, 1890, as follows:

(Said mortgage is attached as Exhibit A to plaintiff's second amended complaint, and it is agreed may be considered as introduced in evidence.)

(See transcript page 22.)

Deed of Jonas Peabody, sheriff, of date June 24, 1895, to W. H. Ansley, for a portion of the property in controversy.

(Said deed appears as Exhibit D to plaintiff's amended complaint, and is to be considered in evidence.)

(See transcript, page 29.)

Deed of Jonas Peabody, sheriff, of date June 24, 1895, to James Pusley, for a portion of the property in controversy.

(Said deed appears as Exhibit E to plaintiff's amended complaint, and is to be considered in evidence.)

(See transcript, page 31.)

Deed of Jonas Peabody, sheriff, of date June 24, 1895, to E.
72 T. Richards, for a portion of the property in controversy.

(Said deed appears as Exhibit F to plaintiff's amended complaint, and is to be considered in evidence.)

(See transcript, page 33.)

Deed of James Pusley to W. H. Ansley, of date December 9, 1895 for a portion of the property in controversy.

(Said deed appears as Exhibit G to plaintiff's amended complaint, and is to be considered in evidence.)

(See transcript page 35.)

Deed of E. T. Richards to W. H. Ansley, of date December 9, 1895, for a portion of the property in controversy.

(Said deed appears as Exhibit H to plaintiff's amended complaint, and is to be considered in evidence.)

(See transcript page 36.)

And plaintiff introduced an act of the General Council of the Choctaw Nation, entitled "Non Citizen Improvement," as follows:

Be It Enacted by the General Council of the Choctaw Nation assembled:

All non citizens not in the employ of a citizen of the Choctaw Nation and not authorized to live in the Choctaw Nation under the provisions of existing treaty stipulations who have made or bought improvements in said Nation, are hereby notified that they are allowed to sell their so-called improvements to citizens, and if such non citizens fail to comply with this section, then it shall be the duty of the sheriffs of the counties in which such improvements may be located to advertise the same for sale in thirty days: and sell the same at the appointed time to the highest Choctaw citizen bidder for cash; one half of which shall be paid into their respective treasuries, and the other half into the national treasury. Provided, however, That if any such non citizen fail or refuse to deliver the possession of such an improvement he shall be reported by the sheriff of that county to the principal chief and by said chief to the United States Indian Agent, to take proper steps for the removal and prosecution of such offender under Section 2118 of the revised statutes of the United States. Provided, further, That a notice of sale shall be posted by the sheriff in three public places in his county, which shall be legal notice to all persons against whom this law may operate.

An Act of the general council of the Choctaw Nation, en-
73 titled "An Act authorizing the principal chief to employ counsel," approved October 30, 1890, as follows:

Bill No. 27. An Act authorizing the principal chief to employ counsel:

SECTION 1. Be it enacted by the general counsel of the Choctaw Nation assembled: That the sum of two thousand dollars ($2,000.-00) is hereby appropriated out of any money in the national treasury not otherwise appropriated, and said sum to be placed to the credit of the principal chief and to be by him used for and in behalf of the Choctaw Nation, in the employing of able and competent counsel to defend the interest of this nation in all suits now pending or that may hereafter come before the United States courts in any manner relative to the full and complete execution of the laws of the Choctaw Nation by the sheriffs of each and every county in the confiscation of property of non citizens who are now occupying lands or buildings or who may hereafter occupy, not in conformity to the laws of the Choctaw Nation.

SEC. 2. Be it further enacted, That the principal chief be and he is hereby required to make a full and complete report, showing the expenditures of the aforesaid amount of money.

SEC. 3. Be it further enacted, that all acts coming in conflict with this act are hereby repealed, and that this act take effect from and after its passage.

Approved October 30, 1895.

JEFF GARDNER, *P. C., C. N.*

In the United States Court for the Indian Territory, Second Judicial Division.

In Equity.

LANGHORNE WISTER ET AL.
vs.
THE CHOCTAW COAL & RAILWAY COMPANY.

To the Honorable the Judge of the United States Court for the Indian Territory, Second Judicial Division:

The undersigned, who, by a decree of your honorable court, entered on the seventeenth day of July, 1894, was appointed Special Master Commissioner, to sell the railroad property and franchises therein described, would respectfully report that having given notice of the time and place when and where, and the terms upon which the sale was to be made, by advertisement thereof as directed
74 in the said decree, a copy of which advertisement, and proof of publication thereof is annexed to this report, he offered the said property and franchises for sale at public auction at two o'clock in the afternoon of the eighth day of September, 1894, at the door of the principal office of the Choctaw Coal and Railway Company, at South McAlester, Indian Territory, and after having caused to be read the statement furnished by the receiver of the assets and liabilities of the receivership and executory contracts made by the receiver, under the authority of the court (a copy thereof is hereto annexed) sold the same in accordance with the directions of said decree, to George H. Earle, Jr., Sidney F. Tyler, Francis I. Gowen, George B. Kirkbride and Nicholas Thouron, a committee appointed by the stockholders and creditors of the Choctaw Coal and Railway Company, under an agreement made the 21st day of June, A. D., 1894, for the price of three and one-half million dollars ($3,500,000.00) the said George H. Earle, Jr., Sidney F. Tyler, Francis I. Gowen, George B. Kirkbride and Nicholas Thouron, committee as aforesaid, being the highest bidders for the said property, and the said sum of three million five hundred thousand dollars ($3,500,000.00) being the highest price bid for the same.

And the said Special Master Commissioner would further report that the said George H. Earle, Sidney F. Tyler, Francis I. Gowen, George B. Kirkbride and Nicholas Thouron did pay to the Special Master Commissioner, before an adjudication of the sale was made to them, the sum of Fifty thousand Dollars ($50,000) in cash, which said sum was immediately upon the receipt thereof deposited in the State National Bank of Denison, Texas, to the credit of the cause.

YANCEY LEWIS,
Special Master Commissioner.

Current Assets and Liabilities of the Receiver of the Choctaw Coal and Railway Company on September 1st, 1894.

Current Liabilities.

Receivers' Certificates			840225.00
Accrued Interest, July and August			9800.00
Audited vouchers			49405.38
Due Individuals and Companies.			
Grady Trading Co.		39790.26	
Stallings & Grady		1655.52	
Grady & Freeney		2359.46	
75 F. R. Mitchell		2.70	43807.94
Bills payable			7575.00
Wages, including August pay rolls			30429.24
Conductors' Rebate Checks			120.00
			981362.56

Current Assets.

Cash on hand August 31, 1894		5749.86
Due from Station Agents and Conductors.		5904.87
Due from solvent companies and individuals	24516.26	
Due from coal sales, August 31, 1894	83307.03	107823.29
Due from foreign lines		5746.66
		125224.68
Net current liabilities	856137.88	
In dispute:		
In dispute	2312.97	
W. H. Cooper & Son	6758.54	9071.51
Total	865209.39	

Notice of Sale.

Whereas, in the case of Langhorne Wister, *et al. vs.* The Choctaw Coal and Railway Company, pending in the United States Court in the Indian Territory, said court, on July 17th, 1894, upon the petition of the Finance Company, of Philadelphia, and others, holders of the certificates issued by the receivers of the Choctaw Coal and Railway Company under the orders of said court, duly made upon the 8th day of January, 1891, and the 13th day of October, 1891, praying for the payment of said certificates, or, in default thereof, for a sale of the property and franchises of the Choctaw Coal and Railway Company, ordered, declared and decreed that the receivers' certificates, issued by Edwin D. Chadick and Francis I. Gowen, receivers of the Choctaw Coal and Railway Company, under the order of January 8th, 1891, of which there are now outstanding for value certificates to the amount of $499,725, are a first lien upon the prop-

erty, estate, franchises of the Choctaw Coal and Railway Company of whatever kind and description and wheresoever situated. And that the receiver's certificates issued by Francis I. Gowen, acting receiver of the Choctaw Coal and Railway Company under the order of October 13th, 1891, of which there are now outstanding
76 for value certificates to the amount of $177,000.00, are a lien upon all the property and franchises of the Choctaw Coal and Railway Company, said lien being second to that of the previous issue of certificates made under the order of January 8th, 1891, upon the road constructed prior to the order authorizing the same, and are a first lien upon the roadway, stations and sidings thereafter constructed. And,

Whereas, the court declared and decreed that the franchises and property covered by the liens of the said certificates described as near as may be are as follows: All the right, title and interest of the said Choctaw Coal and Railway Company in and to said franchises of the said Choctaw Coal and Railway Company, as the same is now located or may hereafter be located or constructed, beginning at a point on Red river, the southern boundary line of the Indian Territory, at the bluff know as Rocky Cliff, in the Indian Territory, and running thence by the most feasible and practicable route to a point on the east boundary line immediately contiguous to the west boundary line of the state of Arkansas, and also a branch line of railway to be constructed from the most suitable point to the said main line for obtaining a feasible and practicable route in a westerly or northwesterly direction to the leased coal veins of the Choctaw Company in Tobucksey county, Choctaw Nation, and thence by the most feasible and practicable route to an intersection with the Atchison, Topeka and Santa Fe Railway at the most convenient point between Halifax station and Ear creek, otherwise known as the North fork of the Canadian river; together with its railroads and all right, title and interests of, in and to the telegraph lines on and along the same, as such railroads and telegraph lines have been constructed and completed, or been located or practically constructed and built, from Wister Junction to South McAlester, and to the westward thereof, and from Oklahoma City to Fort Reno, and to the eastward thereof.

Together, also, with all the rolling stock and equipment of whatever nature or kind owned and acquired, and also all the leases, tenements and hereditaments acquired or appropriated for the purpose of a right of way for the said railroad and telegraph lines, and all the easements and appurtenances thereunto belonging or in any wise appertaining, and all the railroads, side tracks, switches and spurs, ways and rights of way, depot grounds, tracks, bridges, viaducts, culverts, fences and other structures, depots, water stations, station houses, engine houses, car houses, wood houses, ware houses,
77 machine shops, work shops, superstructures, erections and fixtures, all locomotives, tenders, cars and other rolling stock and equipment, and all rails, ties, chairs and machinery, tools, implements, fuel and material whatsoever, which the said railway company or its receivers acquired for or in respect to the locating, con-

structing, operating, renewing, replacing and repairing and maintaining of said railroad and telegraph lines, or in connection therewith, and for the business of said railroad and telegraph lines; together, also, with all betterments, additions, improvements, repairs, renewals and replacements made to on or upon said railroad and telepraph lines, or any part or portion thereof; together with all material and supplies on hand; also all corporate franchises of the said railroad company, or of any nature relating thereto, including the rights, powers and franchises granted to or conferred upon said Choctaw Coal and Railway Company, its successors and assigns under and by virtue of an Act of Congress or of the state of Minnesota. And also the franchise to survey, locate and to construct, maintain, use and operate the railroad and telegraph lines on or along the route or routes mentioned in said Acts of Congress, together with all and singular the franchises, privileges and appurtenances to the said railroad and telegraph lines belonging or in any wise appurtaining, together with all books, maps, papers, vouchers, documents, receipts, outstanding claims and dues relating to said Choctaw Coal and Railway Company, or the business thereof, and all estate property, right, title and interest of the said Choctaw Coal and Railway Company under the coal leases made between citizens of the Choctaw Nation, Indian Territory, of the one part and the said Choctaw Coal and Railway Company of the other part, said leases being ninety-five in number, together with all improvements, appurtenances and fixtures thereunto appertaining, or belonging, including the railroad spurs or branches to the mines, and all colliery improvements, dwellings, offices, buildings, shafts, engines, boilers, machinery, tools, mine cars, horses, mules, wagons, material and supplies thereunto appertaining or belonging, or used in connection therewith, and for all the purposes of this sale, the inventory of the receiver may be referred to for more full and detailed description of the property covered by the lien of the said certificates, which shall include all additions made or to be made to the railroad and mining
78 property, and all supplies which the receiver may have on hand at the time of sale, or may acquire thereafter before delivery of possession. And,

Whereas, the said court further ordered and decreed that all and singular the property and franchises of every kind above described be sold on the 8th day of September, 1894, by Yancey Lewis, who was thereby appointed Special Master Commissioner for that purpose, said sale to be subject to all executory contracts made by the said receiver under the authority of the court, and subject also to the debts and liabilities of the receiver which have not been or shall not be paid by the said receiver, or out of the proceeds of the sale or sales, or otherwise, or which shall be adjudged by the court to be debts or obligations properly chargeable against the property purchased, but the said receiver's certificates, and all other ascertained and liquidated indebtedness of the said receivership to be paid out of the proceeds of sale next after the payment of the costs and expenses of the cause.

Now, by virtue of such order, I, Yancey Lewis, Special Master Commissioner, hereby give notice that I will sell on September 8th, 1894, between the hours of 12 m. and 4 o'clock p. m. at public

auction, at the door of the principal office of the Choctaw Coal and Railway Company, in South McAlester, Indian Territory, for the highest and best price the same may bring in cash, and for not less than an amount equal to the said receiver's certificates and the liquidated liabilities of the receiver, and the costs and expenses of the cause, all of the above and foregoing property, rights and franchises of every description whatsoever; of the Choctaw Coal and Railway Company, and upon confirmation of such sale, will make, execute and deliver to the purchaser or purchasers at such sale, a good and sufficient deed to the railroad property and franchises, coal leaseholds and appurtenances sold. But before any bid is accepted by me, the bidder shall be required to pay in cash the sum of $50,000.00, and if the sale is confirmed, the balance of the purchase money must be paid on the day of confirmation. But the purchaser shall have the right to anticipate the day of payment and settlement for the balance of said bid may be made by the surrender of the receiver's certificates or other obligations of the receivership to the extent to which such obligations shall be entitled to share in the proceeds of sale. I will receive from the purchaser or purchasers
79 in part payment of the purchase money, any of the bonds or unpaid coupons, with interest thereon, to or toward the payment of which the net proceeds of such sale shall be legally applicable the amount at which such bonds or coupons are to be received in part payment of such purchase money to be determined and fixed at a sum which shall, upon a proper distribution and accounting for such proceeds, be not more than the share or proportion payable out of such net proceeds to such purchaser or purchasers as the holder or holders of such bonds or coupons, and the bonds and coupons so applied in satisfaction of the purchase money shall be treated as a payment thereof to the extent of such application.

South McAlester, Indian Territory, July 17, 1894.

YANCEY LEWIS,
Special Master Commissioner.

Affidavit of Publication.

STATE OF MINNESOTA, *County of Hennepin, ss:*

Came personally before me Fred Sheridan, who being duly sworn, doth depose and say that he now is and during all the time hereinafter mentioned, has been advertising clerk and printer, of the Minneapolis Tribune, a daily newspaper of general circulation, printed and published in the city of Minneapolis, in said Hennepin county; that he knows of his own knowledge that the printed notice hereto attached, cut from the columns of said newspaper was inserted, printed and published in said newspaper once in each week for six successive weeks; that said notice was first inserted, printed and published in said newspaper on Friday, the 20th day of July, 1894, and was printed and published thereon on each and every Friday thereafter, until and including Friday, 24th day of August, 1894; that said newspaper was regularly issued and published on

every day of each week during all the time aforesaid, and that said newspaper has been so issued and published in the English language for more than one year previous to said first named date.

FRED SHERIDAN.

Subscribed and sworn to before me, this 5th day of September, A. D., 1894.

[SEAL] R. B. WHITE,
Notary Public, Hennepin County, Minn.

Printer's fee, $57.75.
Received payment,

MINNESOTA TRIBUNE CO.,
80 Per F. SHERIDAN.

Notice of Sale.

Whereas, in the case of Langhorne Wister, *et al. vs.* The Choctaw Coal and Railway Company, pending in the United States Court in the Indian Territory, said court, on July 17th, 1894, upon the petition of the Finance Company, of Philadelphia, and others, holders of the certificates issued by the receivers of the Choctaw Coal and Railway Company under the orders of said court, duly made upon the 8th day of January, 1891, and the 13th day of October, 1891, praying for the payment of said certificates, or, in default thereof, for a sale of the property and franchises of the Choctaw Coal and Railway Company, ordered, declared and decreed that the receivers' certificates, issued by Edwin D. Chadick and Francis I. Gowen, receivers of the Choctaw Coal and Railway Company, under the order of January 8th, 1891, of which there are now outstanding for value certificates to the amount of $499,725, are a first lien upon the property, estate, franchises of the Choctaw Coal and Railway Company of whatever kind and description and wheresoever situated. And that the receivers' certificates issued by Francis I. Gowen, acting receiver of the Choctaw Coal and Railway Company under the order of October 13th, 1891, of which there are now outstanding for value certificates to the amount of $177,000.00, are a lien upon all the property and franchises of the Choctaw Coal and Railway Company, said lien being second to that of the previous issue of certificates made under the order of January 8th, 1891, upon the road constructed prior to the order authorizing the same, and are first lien upon the roadway, stations and sidings thereafter constructed. And,

Whereas, the court declared and decreed that the franchises and property covered by the liens of the said certificates described as near as may be are as follows: All the right, title and interest of the said Choctaw Coal and Railway Company in and to said franchises of the said Choctaw Coal and Railway Company, as the same is now located or may hereafter be located or constructed, beginning at a point on Red river, the southern boundary line of the Indian Territory, at the bluff known as Rocky Cliff, in the Indian Territory, and running thence by the most feasible and practicable route to a point on the

east boundary line immediately contiguous to the west boundary line of the state of Arkansas, and also a branch line of railway to be constructed from the most suitable point to the said main
81 line for obtaining a feasible and practicable route in a westerly or northwesterly direction to the leased coal veins of the Choctaw Company in Tobucksey county, Choctaw Nation, and thence by the most feasible and practicable route to an intersection with the Atchison, Topeka and Santa Fe Railway at the most convenient point between Halifax station and Ear creek, otherwise known as the North fork of the Canadian river; together with its railroads and all right, title and interests of, in and to the telegraph lines on and along the same, as such railroads and telegraph lines have been constructed and completed, or been located or practically constructed and built, from Wister Junction to South McAlester, and to the westward thereof, and from Oklahoma City to Fort Reno, and to the eastward thereof.

Together, also, with all the rolling stock and equipment of whatever nature or kind owned and acquired, and also all the leases, tenements and hereditaments acquired or appropriated for the purpose of a right of way for the said railroad and telegraph lines, and all the easements and appurtenances thereunto belonging or in any wise appertaining, and all the railroads, side tracks, switches and spurs, ways and rights of way, depot grounds, tracks, bridges, viaducts, culverts, fences and other structures, depots, water stations, station houses, enigne houses, car houses, wood houses, ware houses, machine shops, work shops, superstructures, erections and fixtures, all locomotives, tenders, cars and other rolling stock and equipment, and all rails, ties, chairs and machinery, tools, implements, fuel and material whatsoever, which the said railway company or its receivers acquired for or in respect to the locating, constructing, operating, renewing, replacing and repairing and maintaining of said railroad and telegraph lines, or in connection therewith, and for the business of said railroad and telegraph lines; together, also, with all betterments, additions, improvements, repairs, renewals and replacements made to on or upon said railroad and telegraph lines, or any part or portion thereof;together with all material and supplies on hand; also all corporate franchises of the said railroad company, or of any nature relating thereto, including the rights, powers and franchises granted to or conferred upon said Choctaw Coal and Railway Company, its successors and assigns under and by virtue of an Act of Congress or of the state of Minnesota. And also the franchise to survey, locate and to construct, maintain, use and operate the railroad and telegraph lines on
82 or along the route or routes mentioned in said Acts of Congress, together with all and singular the franchises, privileges and appurtenances to the said railroad and telegraph lines belonging or in any wise appurtaining, together with all books, maps, papers, vouchers, documents, receipts, outstanding claims and dues relating to said Choctaw Coal and Railway Company, or the business thereof, and all estate property, right, title and interest of the said Choctaw Coal and Railway Company under the coal leases made be-

tween citizens of the Choctaw Nation, Indian Territory, of the one part and the said Choctaw Coal and Railway Company of the other part, said leases being ninety-five in number, together with all improvements, appurtenances and fixtures thereunto appertaining, or belonging, including the railroad spurs or branches to the mines, and all colliery improvements, dwellings, offices, buildings, shafts, engines, boilers, machinery, tools, mine cars, horses, mules, wagons, materials and supplies thereunto appertaining or belonging, or used in connection therewith, and for all the purposes of this sale, the inventory of the receiver may be referred to for more full and detailed description of the property covered by the lien of the said certificates, which shall include all additions made or to be made to the railroad and mining property, and all supplies which the receiver may have on hand at the time of sale, or may acquire thereafter before delivery of possession. And,

Whereas, the said court further ordered and decreed that all and singular the property and franchises of every kind above described be sold on the 8th day of September, 1894, by Yancey Lewis, who was thereby appointed Special Master Commissioner for that purpose, said sale to be subject to all executory contracts made by the said receiver under the authority of the court, and subject also to the debts and liabilities of the receiver which have not been or shall not be paid by the said receiver, or out of the proceeds of the sale or sales, or otherwise, or which shall be adjudged by the court to be debts or obligations properly chargeable against the property purchased, but the said receivers' certificates, and all other ascertained and liquidated indebtedness of the said receivership to be paid out of the proceeds of sale next after the payment of the costs and expenses of the cause.

Now, by virtue of such order, I, Yancey Lewis, Special Master Commissioner, hereby give notice that I will sell on Sep-
83 tember 8th, 1894, between the hours of 12 m. and 4 o'clock p. m. at public auction, at the door of the principal office of the Choctaw Coal and Railway Company, in South McAlester, Indian Territory, for the highest and best price the same may bring in cash, and for not less than an amount equal to the said receiver's certificates and the liquidated liabilities of the receiver, and the costs and expenses of the cause, all of the above and foregoing property, rights and franchises of every description whatsoever; of the Choctaw Coal and Railway Company, and upon confirmation of such sale, will make, execute and deliver to the purchaser or purchasers at such sale, a good and sufficient deed to the railroad property and franchises, coal leaseholds and appurtenances sold. But before any bid is accepted by me, the bidder shall be required to pay in cash the sum of $50,000.00, and if the sale is confirmed, the balance of the purchase money must be paid on the day of confirmation. But the purchaser shall have the right to anticipate the day of payment and settlement for the balance of said bid may be made by the surrender of the receiver's certificates or other obligations of the receivership to the extent to which such obligations shall be entitled to share in the proceeds of sale. I will receive from the purchaser or purchasers

in part payment of the purchase money, any of the bonds or unpaid coupons, with interest thereon, to or toward the payment of which the net proceeds of such sale shall be legally applicable, the amount at which such bonds or coupons are to be received in part payment of such purchase money to be determined and fixed at a sum which shall, upon a proper distribution and accounting for such proceeds, be not more than the share or proportion payable out of such net proceeds to such purchaser or purchasers as the holder or holders of such bonds or coupons, and the bonds and coupons so applied in satisfaction of the purchase money shall be treated as a payment thereof to the extent of such application.

South McAlester, Indian Territory, July 17, 1894.

YANCEY LEWIS,
Special Master Commissioner.

STATE OF PENNSYLVANIA, *County of Philadelphia, ss:*

H. J. McNichol, being duly sworn, according to law, doth depose and say: I am clerk in the office of The Public Ledger, a daily newspaper published in the city of Philadelphia. A notice, a 84 copy of which is hereto attached, was published in said paper on the following dates: July 26, and August 2nd, 9th, 16th, 23rd and 30th.

H. J. McNICHOL.

Sworn and subscribed to before me this fifth day of September, 1894.

[SEAL.] EDW'D RAMSEY.

STATE OF PENNSYLVANIA, *County of Philadelphia, ss:*

I, William B. Mann, prothonotary of the county of Philadelphia, and clerk of the Court of Common Pleas of said County, which are courts of record having a common seal, being the officer authorized by the laws of the state of Pennsylvania to make the following certificate, do certify, that Edward Ramsey, Esquire, before whom the annexed oath or affirmation was made was at the time of so doing a notary public for the commonwealth of Pennsylvania, residing in the county of Philadelphia, duly commisioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of deeds or conveyances for lands, tenements and hereditaments in said state of Pennsylvania, and to all whose acts as such, full faith and credit are and ought to be given, as well in courts of judicature as elsewhere, and that I am well acquainted with the handwriting of the said notary public, and verily believe his signature thereto is genuine, and that said oath or affidavit purports to be taken in all respects as required by the laws of the State of Pennsylvania.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 5 day of Sept., in the year of our Lord, one thousand eight hundred and ninety-four.

[SEAL.] WILLIAM B. MANN,
Prothonotary.

A. Yes, sir.

Statement of Executory Contracts of Receiver Made by the Authority of the Court.

Agreement between Francis I. Gowen, acting receiver of the Choctaw Coal and Railway Company, and the Missouri Car & Foundry Co., dated July 11th, 1892, for the purchase of five hundred coal cars.

Series 1, 300 coal cars, Oct. 25th, 1892, payable in 72 monthly payments.

	Original amount	130500.00	
85	Amount paid.....	49250.00	
	Amount due		81250.00

Series 2, 200 coal cars, July 19th, 1893, payable in 72 monthly payments.

Original amount.....	87000.00	
Amount paid.....	24083.29	
Amount due		62916.71

To the introduction of which said report the plaintiff objected, because the same is incompetent, irrelevant and immaterial, which objection was by the court overruled, to which ruling the plaintiff duly excepted.

In the United States Court in the Indian Territory, Second Judicial Division.

No. 196.

LANGHORNE WISTER and THE GIRARD LIFE INSURANCE, ANNUITY AND TRUST COMPANY OF PHILADELPHIA, Trustee, Plaintiffs,

vs.

CHOCTAW COAL AND RAILWAY COMPANY, Defendant.

Final Order Discharging Receiver.

And now on this 2nd day of March, 1895, this matter coming on to be heard in open court for final determination; and it appearing to the court that in pursuance of the order of this court of October 13th, 1894, the receiver, Francis I. Gowen, has passed his final accounts before Yancey Lewis, Esq., special master in chancery herein; the approval of said accounts by the said master is hereby approved by the court; and all of the reports hereto filed by the said Master, and his predecessors, Major William Nelson, as to the accounts of the receivers, are hereby approved by the court.

And it further appearing to the court that in pursuance of the orders of this court heretofore made, and in pursuance of the provisions of the act of congress, approved August 24th, 1894, the possession of all of the property and franchises of the Choctaw Coal and Railway Company was, on the 3rd day of October, 1894, by the said receiver delivered and transferred to and became vested in the Choctaw, Oklahoma and Gulf Railroad Company, which company, on said date, assumed the possession, management and control of said property and has since said time continued to operate the same.

It is, therefore, ordered, adjudged and decreed by the
86 court, that said Receiver be discharged as Receiver, and that this cause be dismissed except for the purposes hereinafter stated.

And it further appearing to the court that the purchasers of said property at judicial sale bought the same subject to the indebtedness and liabilities of the receivership lawfully incurred, and not satisfied out of the proceeds of said sale, and further subject to all executory contracts made by the receiver under the authority of the court. It is ordered, adjudged and decreed that the court reserves and retains jurisdiction of this cause, and over the property of said company which was sold to the purchasers thereof at judicial sale, for the purpose of determining in this cause all such claims, liabilities and demands, and for the further purpose of fully protecting said Receiver against any liability on any claims or demands existing or to exist against him, and for the purpose of protecting those having lawful claims against the Receivership. The liabilities thus assumed by the purchasers of said property are as follows:

All lawful claims not barred by the statute of limitations, against Edwin D. Chadick and Francis I. Gowen, as joint receivers, accruing between January 8th, 1891, and August 28th, 1891, inclusive of both dates, which have not heretofore been paid.

Second. All lawful claims, not barred by the statute of limitations, against Francis I. Gowen, as acting receiver, between August 28th, 1891, and June 14th, 1893.

Third. All lawful claims, not barred by the statute of limitations, against James W. Throckmorton and Francis I. Gowen, as joint receivers, accruing between June 14th, 1893, and April 21st, 1894, inclusive of both dates.

Fourth. All lawful claims not barred by the statute of limitations, against Francis I. Gowen, as sole receiver, accruing between April 21st, 1894, and October 3rd, 1894.

It is further ordered, adjudged and decreed by the court that the above entitled cause, being cause No. 196 on the equity docket of this court, be and is retained and kept open for the purpose of ascertaining and determining all claims, demands and liabilities against said receivership, and against property that was in the possession of said receivers and surrendered by them to the purchasers thereof. All such claims, demands and liabilities shall

first be presented to the Choctaw, Oklahoma and Gulf Rail-
87 road Company, and if not paid, or if amicable adjustment of the same can not be had within a reasonable time, the persons presenting such claims or demands shall have the privilege and authority of presenting them to the court by intervention in the above entitled cause, for the purpose of having the same ascertained and determined in and by such intervention proceedings, and any orders, judgments or decrees so rendered by the court in such proceedings may be enforced and shall only be enforced against the property of said railway company to the same extent that judgments could have been enforced if said property had not been surrendered into the possession of said Choctaw, Oklahoma and Gulf Railroad Company, or was still in the possession of said receivers. Such intervention proceedings must be filed in this cause in this court on or before the 1st day of January, 1895, and after that date no further intervention shall be permitted in this cause, and the right of any claimants who shall not on or before that date have commenced intervention proceedings to avail themselves of the remedies herein provided for their benefit shall cease and determine, and such claims shall be barred and shall not be a charge on the property of said company. Provided, that when any such intervention proceedings are filed in this court, due and legal notice of the same shall be given the said Choctaw, Oklahoma and Gulf Railroad Company.

It is further ordered, adjudged and decreed that nothing in this decree contained is intended to affect or shall be construed as affecting the status of any pending or undetermined litigation, in which the receiver of said company appears as a party. And such litigation may be continued to final determination in the name of the receiver, but for the use of the Choctaw, Oklahoma and Gulf Railroad Company and at its cost and expense, and with the right of that company, should it be so advised, to appear and be substituted in any such litigation.

To the introduction of which decree the plaintiff objected, as being incompetent, irrelevant and immaterial, which objection was by the court overruled, to which ruling the plaintiff duly excepted.

In the United States Court for the Indian Territory, Central District.

No. 969.

E. D. CHADICK, Trustee, Plaintiff,

vs.

FRANCIS I. GOWEN and J. W. THROCKMORTON, Receivers of
88 the Choctaw Coal and Railway Company; Dr. E. N. ALLEN, Rev. J. H. MILBURN and Judge ERNEST, Defendants; J. W. McLOUD, Trustee, Intervenor.

Now, on this — day of June, A. D., 1895, it is ordered that Jonas Peabody, sheriff of Tobucksey county, Choctaw Nation, his

agents, representatives or deputies, be and are hereby restrained from selling at sheriff's sale or otherwise, on the 24th day of June, 1895, or at any other time, the following buildings, to-wit:

One dwelling house and improvements thereunto belonging in the town of South McAlester, built by and known as a house of the Choctaw Coal and Railway Company, now being occupied by J. D. Bradford.

One dwelling house and improvements thereunto belonging in the town of South McAlester, built by and known as a house of the Choctaw Coal and Railway Company, now being occupied by J. M. Zike.

One dwelling house and improvements thereunto belonging in the town of South McAlester, built by and known as a house of the Choctaw Coal and Railway Company, now being occupied by O. W. Argo.

One dwelling house and improvements thereunto belonging in the town of South McAlester, built by and known as a house of the Choctaw Coal and Railway Company, now being occupied by J. F. Holden.

One dwelling house and improvements thereunto belonging in the town of South McAlester, built by and known as a house of the Choctaw Coal and Railway Company, now being occupied my H. G. Knapp.

One dwelling house and improvements thereunto belonging in the town of South McAlester built by and known as a house of the Choctaw Coal and Railway Company, now being occupied by Mr. Huff.

One dwelling house and improvements thereunto belonging in the town of South McAlester, built by and known as a house of the Choctaw Coal and Railway Company, now being occupied by Mr. Stuart.

One dwelling house and improvements thereunto belonging in the town of South McAlester, built by and known as a house of the Choctaw Coal and Railway Company, now being occupied by H. Holler.

One four-story stone building and improvements thereunto belonging in the town of South McAlester, built by the Choctaw Coal and Railway Company, and known as the Kali-Inla building,
89 now being occupied by the postoffice, United States Court, and the grocery store of P. A. Vance.

And the said Jonas Peabody, sheriff as aforesaid, his agents, representatives or deputies, are hereby notified not to sell said buildings on said date or at any other time.

To the introduction of which order the plaintiff objected for the reason that the same is incompetent, irrelevant and immaterial, and for the further reason that the plaintiff was not a party to said suit, and not bound thereby, which objection was by the court overruled, to which ruling the plaintiff duly excepted.

No. 196.

LANGHORNE WISTER ET AL.
vs.
THE CHOCTAW COAL & RAILWAY CO.

Decree of Confirmation of Sale.

And now, this 11th day of September, 1894, the report of the special master commissioner, Yancey Lewis, Esq., appointed under decree of July 17th, 1894, being before the court, and no exceptions being taken thereto, it is ordered, adjudged and decreed that the said report of the special master commissioner, and the sale therein referred to, as made by him, and the deposit of the earnest money by him in the State National Bank of Denison, Texas, be approved, and that the time for the payment of the balance of the purchase money be extended thirty days. It is further ordered that the said special master commissioner be and he is authorized and directed to attend at the office of the Finance Company, of Pennsylvania, in the city of Philadelphia, in Pennsylvania, upon a day to be hereafter agreed upon between the parties, but not later than within thirty days from the date hereof, to receive the balance of the purchase money, and upon payment thereof, the said special master commissioner, and the Choctaw Coal and Railway Company shall execute and deliver to Geo. H. Earle, Jr., Sidney F. Taylor, Francis O. Gowen, George C. Kirkbride, and Nicholas Thouron, a deed for the property and franchises described in the said decree of July 17, 1894, in the form hereto annexed, which form of deed is hereby approved, and it is further ordered that upon the execution and delivery of the said deed, the said purchasers shall then and thereafter be let into the possession of the said premises conveyed.

It is further ordered that the said special master commissioner with all convenient speed, prepare a report, reporting the
90 distribution of purchase money of the said property and that Francis I. Gowen, Esq., receiver heretofore appointed by the court, as soon as conveniently may be, file with the Special Master Commissioner his final report as receiver, and that the Master report thereon to the court.

It is further ordered that all decrees and orders heretofore made in the cause be confirmed, and that all questions not disposed of in the foregoing decree or properly arising under the same, be reserved until the further order of the court.

(Signed) CHARLES B. STUART, *Judge.*

Which said decree was objected to by plaintiff, as being incompetent, irrelevant and immaterial, which objection was by the court overruled, to which ruling of the court the plaintiff then and there duly excepted.

No. 196.

LANGHORNE WISTER ET AL.
vs.
THE CHOCTAW COAL AND RAILWAY CO.

Decree.

And now, July 17th, 1894, this cause came on to be heard upon the petition of the Finance Company of Pennsylvania, and others, holders of certificates issued by the receivers of the Choctaw Coal and Railway Co., under the orders of this court duly made upon the 8th day of January, 1891, and the 13th day of October, 1891, praying for the payment of the said certificates, or in default thereof for a sale of the property and the franchises of the Choctaw Coal and Railway Company, and it appearing that the service of notice of this application and of the form of the decree to be made thereunder had been made upon the Choctaw Coal and Railway Company, defendant, and upon the Girard Life Insurance Annuity and Trust Co., trustee, under the mortgages of January 14th, 1890, January 15th, 1890, and December 1st, 1890, and the court being fully advised in the premises, it is thereupon, upon consideration, ordered and decreed, First: That the receivers' certificates issued by Edwin D. Chadick and Francis I. Gowen, receivers of the Choctaw Coal and Railway Company, under the order of January 8th, 1891, of which there are now outstanding, for value, certificates to the amount of $499,725, are a first lien upon the property, estate and franchises of the Choctaw Coal and Railway Company, of whatever kind and description, and wheresoever situate, including the
91 entire railroad and coal leases, mines, mining machinery, railroad track, road bed, depots, rolling stock, franchises, rights and privileges of the corporation defendant, and all assets and property real and personal and mixed of every kind and description in the hands of the receivers, and that the receiver's certificates issued by Francis I. Gowen, acting receiver, of the Choctaw Coal and Railway Company, under the order of October 13th, 1891, of which there are now outstanding for value, certificates to the amount of $177,000 are a lien upon all the property and franchises of the said Choctaw Coal and Railway Company, said lien being second to that of the previous issue of certificates made under the order of January 8th, 1891, upon the road constructed prior to the order authorizing the same, and a first lien upon the roadway, stations and sidings thereafter constructed.

Second. The court declares and decrees that the franchises and property covered by the lien of the said certificates described, as near as may be, are as follows:

All the right and title and interest of the said Choctaw Coal and Railway Company in and to the said franchises of the said company as the same is now located, or may hereafter be located or constructed, beginning at a point on the Red River (the southern boundary line of the Indian Territory), at the bluff known as Rocky

Cliff, in the Indian Territory, and running thence by the most feasible and practicable route to a point on the east boundary line immediately contiguous to the west boundary line of the state of Arkansas, and also a branch line of railway to be continued from the most suitable point on the said main line for obtaining a feasible and practicable route in a westerly or northwesterly direction to the leased coal veins of the Choctaw Company, in Tobucksey county, Choctaw Nation, and continuing thence by the most feasible and practicable route to an intersection with the Atchison, Topeka and Santa Fe Railway, at the most convenient point between Halifax Station and Ear Creek, otherwise known as the North Fork of the Canadian River, together with its railroad and all right, title, and interest of and in and to the telegraph line on and along the same as such railroad and telegraph line has been constructed and completed or been located and partially constructed and built, from Wister Junction to South McAlester, and to the westward thereof, and from Oklahoma City to Ft. Reno (and to the eastward thereof)

92 together, also, with all the rolling stock and equipment of whatever nature and kind, owned or acquired, and also all the lands, tenements and hereditaments acquired or appropriated for the purpose of a right of way for the said railroad and telegraph lines, and all the easements and appurtenances thereto belonging or in any wise appertaining, and all the railroads, side tracks, switches and spur ways and right of way, depot grounds, tracks, bridges, viaducts, culverts, fences and other structures, depots, water stations, station houses, engine houses, car houses, wood houses, ware houses, machine shops, work shops, superstructures, erections and fixtures. All locomotives, tenders, cars and other rolling stock and equipments, and all rails, ties, chains, and machinery, tools, implements, fuel and material whatsoever, which the said railway company, or its receivers acquired for in respect of the locating, constructing, operating, renewing, replacing and repairing and maintaining of the said railroad and telegraph lines or in connection therewith and for the business of the said railroad and telegraph lines, together, also, with all betterments, additions, improvements, repairs, renewals and replacements made to on or upon said railroad and telegraph lines, or any part or portion thereof, together with all materials and supplies on hand; also all corporate franchises of the said railway company or of any nature relating thereto, including the rights, powers and franchises granted to or conferred upon said Choctaw Coal and Railway Company, its successors and assigns, under and by virtue of any acts of congress, or of the state of Minnesota, and also the franchise to survey, locate and construct, maintain, use and operate the railroad and telegraph lines on or along the route or routes mentioned in said Acts of Congress, together with all and singular the franchise and privileges and appurtenances to the said railroad and telegraph lines belonging, or in any wise appertaining, together with all books, maps, papers, vouchers, documents, receipts, outstanding claims and dues relating to said coal and railway company, or the business thereof, and all the estate, property, right, title and interest of the said Choctaw Coal and Railway Company, under

the coal leases made between citizens of the Choctaw Nation, Indian Territory, of the one part, and the said Choctaw Coal and Railway Company, of the other part, said leases being ninety five in number (a schedule whereof is hereto attached as Exhibit A,) together with all improvements, appurtenances and fixtures thereunto
93 appertaining or belonging, including the railroad spurs or branches to the mines, and all colliery improvements, dwellings, offices, buildings, shafts, engines, boilers, machinery, tools, mine cars, horses, mules, wagons, materials and supplies thereunto appertaining or belonging or used in connection therewith; and for all the purposes of this decree, the inventory of the Receiver may be referred to for more full and detailed description of the property covered by the lien of the said certificates, which shall include all additions made or to be made to the railroad and mining property, and all supplies which the receivers may have on hand at the time of the sale, or may acquire thereafter before delivery of possession.

Third. The Court declares and decrees that there was a default in the payment of the principal of the said certificates, at the maturity thereof, and that the amount thereof, issued under the order of January 8th, 1891, is $499,725, and under the order of October 13th, 1891, $177,000, and under the orders of the court, is $163,000.

Fourth: The court declares and decrees that the premises cannot be sold in parcels without loss and prejudice to all parties interested therein, and that the nature and situation of the property is such that the interests of all the parties require that it shall be sold as an enti-ty.

Fifth: The court orders that the defendant, the Choctaw Coal and Railway Company, pay into the registry of this court, on or before the 1st day of August, 1894, the amount ascertained and herein declared to be due by the receiver to the holders of all receiver's certificates, and other orders of the court, together with interest, permission being also hereby given to the trustees in the said several mortgages or the holders of any bonds issued thereunder and secured thereby, or other creditors of the company, to make such payment and to be thereupon subrogated to the rights of the holders of the said certificates.

Sixth: The court hereby decrees that in event of such payment on the part of the corporation defendant or any party in interest, this cause stand continued, with leave to either party to apply for further orders, and that in the mean time all further proceedings therein be stayed.

Seventh: The court further orders and decrees that all and singular the property and franchises of every kind, described in the second paragraph of this decree, be sold upon the 8th day of Septem-
94 ber, 1894, by Yancey Lewis, who is hereby appointed special master commissioner for that purpose, unless payment be made by the corporation defendant, or by some other party in interest as hereinbefore provided, subject to all executory contracts made by the receiver under authority of the court, by which the receiver is directed to give to the master commissioner a full and accurate statement, and subject, also, to the debts and liabilities of the receiver

which have not been or shall not be paid by the said receiver or out of the proceeds of the sale or sales or otherwise, and which shall be adjudged by the court to be debts or obligations properly chargeable against the property purchased, but the said receiver's certificates and all other ascertained and liquidated indebtedness of the said receivership shall be payable out of the proceeds of sale next after the payment of the costs and expenses of the cause; such sale unless stayed by the payment as provided in the fifth paragraph of this decree, shall be made at public auction at the doors of the principal office of the Choctaw Coal and Railway Co., in South McAlester, Indian Territory, for the highest and best price the same may bring in cash, and for not less than an amount equal to the said receivers certificates and the liquidated liabilities of the receiver together with an amount sufficient to pay the costs and expenses of the cause. Preparatory to such sale, said Master Commissioner shall forthwith give notice of the time and place when and where and the terms upon which the same is to be made, containing a description of the property to be sold, by advertisement thereof in one newspaper published in the city of Minneapolis, and in the city of Philadelphia, once a week for six consecutive weeks, and upon said sale the said Master Commissioner is hereby empowered to make and execute and deliver to the purchaser or purchasers at any such sale, a good and sufficient deed for the railroad property and franchises and coal leases and appurtenances sold; before the Master accepts any bidder or the purchaser, said bidder shall be required to pay in cash the sum of $50,000, and if the sale is confirmed, the balance of the purchase money must be paid on the day of the confirmation; but the purchaser shall have the right to anticipate the day of payment, and settlement for the balance of said bid may be made by the surrender of the receiver's certificates or other obligations of the receivership, to the extent to which such obligations shall be entitled
95 to share in the proceeds of the sale. It is further ordered that the said master commissioner and receiver may receive from the purchaser or purchasers in part payment of the purchase money any of the bonds or unpaid coupons, with interest thereon, to or towards the payment of which the net proceeds of such sale shall be legally applicable, the amount at which such bonds or coupons are to be received, in part payment of such purchase money to be determined and fixed at a sum which shall upon a proper distribution and accounting for such proceeds, be not more than the share or proportion payable out of such net proceeds to such purchaser or purchasers as the holder or holders of such bonds or coupons, and the bonds and coupons so applied in satisfaction of the purchase money shall be treated as a payment to the extent of such application; and it is further ordered that the receipt of the receiver and the master commissioner shall be a sufficient discharge to the purchaser or purchasers of the property, which shall be sold as aforesaid, for his or their purchase money, and that such purchaser or purchasers, his or their heirs, executors, administrators, successors or assigns, shall not, after paying such purchase money and receiving such receipt, be liable to see to the

application of the purchase money upon or for the trusts or purposes of said deed of trust, or be in any manner whatsover answerable for any loss or misapplication or non-application of any such purchase money or any part thereof.

Eighth: The court further orders and decress that the master commissioner shall report the sale and proceedings under this decree to the court with all convenient speed, and give notice thereof to the counsel of *of* record, and if, upon presentation and consideration of said report of sale the court shall confirm the same, the master commissioner and the corporation defendant shall execute and deliver a deed of conveyance to the purchaser, and the purchaser, or its successors, upon the payment of the purchase money and due compliance with the terms of the sale, will then and there be let into possession of the premises, and will also, at the same time, be entitled to receive all books, plans, maps, papers, records and documents of the Choctaw Coal and Railway Company, and of the receiver, relating or appertaining to the franchises now properly included in this decree of sale. And it is further ordered and decreed that by the sale and conveyance to be made as aforesaid of the property and franchises hereinbefore decreed to be sold, the Choctaw Coal
96 and Railway Company, and all persons claiming under it, shall be absolutely barred and foreclosed of and from all estate, right, lien, claim, and equity of redemption of in or to, or in respect of said property and franchises so sold, and conveyed and each and every part thereof.

Ninth: The court further orders and decrees that the receiver remain in possession of the premises until the conveyance thereof with all the powers heretofore or hereafter conferred under existing or any future orders of this court, and that he keep a correct account of the earnings and income of the premises accruing after the date of sale, and if the same shall be confirmed, the purchaser, on delivery of possession by the receiver, will be entitled to receive the net income and earnings accruing down to the date of transfer of possession, subject to the obligation to pay the current liabilities of the receivership and all indebtedness of the receivership lawfully incurred not satisfied out of the proceeds of the sale shall be and remain a charge upon the property until discharged by the purchaser thereof.

Tenth: The court further orders and decrees that the Master Commissioner deposit all monies coming into his hands under this decree immediately upon the receipt thereof, in the registry of the United States court in the Indian Territory at South McAlester, I. T., to the credit of this cause, to be paid out only in pursuance of the order of this court, and on the motion of or on notice to the complainants' solicitors. If the sale shall not be confirmed by the court, the amount of the purchase money paid by the purchaser to be refunded without deduction, unless the non confirmation shall be due to the fault of the purchaser, in which event such terms will be imposed as the court shall think just and proper.

Eleventh: The court further orders and decrees that all equities among the parties to this suit, all questions of costs, expenses and allowances and fees of cause, and all other questions not disposed of

or specially reserved in the foregoing decree, or properly arising under the same or as proper subjects for further direction, are reserved.

SCHEDULE "A."

Coal claim and coal lease No. 27, by John M. Grady and J. Freeny, to the Choctaw Coal and Railway Company, dated May 20th, 1889, and described as follows:

Certain coal claim as hereinafter described and being situated in Gaines county, Choctaw Nation, in the Indian Territory, and which are described as follows: The first coal claim No. 1, James F.
97 Freeny, Wade N. Hampton and John M. Grady, located in Gaines county, Choctaw Nation, Indian Territory, and recorded and described in the records of Gaines county as follows: Place of discovery at or near a lava bed about one and one-half miles east of Brushy creek, and about one and one-half miles north of John Adams' place, bounded on the north by a bridge, and running nearly east and west with some pine timber; coal discovered by James F. Freeny in the year 1877. Parties present at the time of discovery, Wade N. Hampton and Andrew Freeny, and was prospected by John M. Grady and Jeff Neville and James England, and coal found to be four feet or more. Second prospect hole is at a place of discovery about three-quarters of a mile east of prospect No. 1, and was sunk by John M. Grady, J. F. Freeny and Merrill. Coal found four feet or more. Third prospect hole is about one-half mile east of prospect hole No. 2, sunk by John M. Grady, J. F. Freeny and James England, and found to be five feet. Said claims extending one mile in every direction from the point on said coal claim which is marked on the map of said coal claim in the office of the superintendent of mines of said company, as discovery No. 1, which coal claim is operated as shaft No. 2 of said company, except where the same conflicts with other leases of the Choctaw Coal and Railway Co.

Coal claim and coal lease No. 2, by John M. Grady, John F. Freeny to the Choctaw Coal and Ry. Company, dated May 20th, 1889, and described as follows: Coal claim in the lava bed described in coal claim No. 1, coal discovered and owned by John M. Grady and James F. Freeny, lying east and joining claim No. 1, located in the lava bed; coal owned by Freeny, Grady and Hampton. Prospect hole No. 2 is the place of discovery, and is about one mile east of prospect hole No. 3, and about one mile east of prospect hole No. 2 on claim No. 1. The place of discovery on claim No. 2, prospect No. 4, was sunk by John M. Grady, James F. Freeny and James England. Coal found to be four feet or more, and extending one mile in every direction, except where the same conflicts with lease No. 27 and 34 of the Choctaw Coal and Railway Co.

Coal claim and coal lease No. 29, by John M. Grady, James F. Freeny, to the Choctaw Coal & Railway Company, dated May 20th, 1889, and described as follows: Coal claim No. 3, located on

the lava bed coal discovery described in claim No. 1, and
98 owned by said Grady & Freeny, lying east and adjoining claim No. 2, on the west of prospect hole No. 5 is the place of discovery, which is about one and one-half miles east of prospect hole No. 4 on claim No. 2. The place of discovery of claim No. 2 thence one-half mile east of prospect hole No. 6. Prospect holes No. 5 and No. 6 were sunk by John M. Grady, J. F. Freeny and James England, and coal found to be four feet or more, extending one mile in every direction except where the same conflicts with other leases of the Choctaw Coal and Railway Company.

Coal claim and coal lease No. 30, by John M. Grady and James F. Freeny, to the Choctaw Coal and Railway Company, dated May 20, 1889, and described as follows: Coal claim No. 4, located on the lava bed discovery and owned by John M. Grady and James F. Freeny, place of discovery about two miles east of prospect hole No. 4 on claim No. 3, on a dry ditch running north and south one and one-half miles west of a cabin owned by William Anderson. The coal on this claim was prospected by John M. Grady and Jas. F. Freeny and found to be four feet or more and extended one mile in every direction, from said beginning point, except where the same conflicts with other leases of the Choctaw Coal and Railway Company.

Coal claim and coal lease No. 31, by John M. Grady and James F. Freeny, to the Choctaw Coal & Railway Company, dated May 20, 1889, and described as follows: Coal claim No. 5, located on the lava bed coal discovery, and owned by John M. Grady and James F. Freeny, place of discovery on the north side of prairie, and about three miles east of prospect hole No. 6, and about six hundred yards west of a cabin owned by William Anderson, and about one and one-half miles northwest of Moses Williams. Prospected by John M. Grady and James F. Freeny, and extends one mile in every direction from said beginning point, except where the same conflicts with other leases of the Choctaw Coal and Railway Company. The above claims No. 27 to 31, inclusive, are recorded in Gaines county, Choctaw Nation, in record book No. 1, pages 205 to 214, inclusive.

Coal claim and coal lease No. 32, by Jonas Durant, John M. Grady, J. F. Freeny, G. M. Bond and R. J. Ward, to the Choctaw Coal and Railway Company, dated August 1, 1889, and described as follows: Certain coal claims lying and being situated in Gaines county, Choctaw Nation, and in said Indian Territory, and described as follows: What is known as Jonas Durant's first discovery
99 begins at a point on what is known as John Adams' prairie, about one mile northwest of the coal claim discovery by Ahotubbee party and others, and about two miles southwest of John Adams' home discovery of coal and about two miles east of Brushy creek, extending one mile in every direction, except where the same conflicts with lease No. 39, of the Choctaw Coal and Railway Company.

Coal claim and coal lease No. 33, by Jonas Durant, John M. Grady, James F. Freeny, G. M. Bond and R. J. Ward, to the Choctaw Coal and Railway Company, dated August 1st, 1889, and de-

scribed as follows: What is known as Jonas Durant's second discovery, *beings* at a point about three miles north of Durant's mineral spring, about two miles north of east of Joseph Hacklotubbee's place, and about four miles northwest of Jonas Durant's place, and extends one mile in every direction, except where the same conflicts with other coal leases of the Choctaw Coal and Railway Company.

Said coal claims No. 32 and 33 are recorded by said parties in Gaines county, Choctaw Nation, Indian Territory, in record book No. 1, page 226.

Coal claim and coal lease No. 34, by Mrs. John Adams, John M. Grady, James F. Freeny, G. M. Bond and Robert J. Ward, to the Choctaw Coal and Railway Company, dated August 1st, 1889, and described as folows: A certain coal claim lying and being situated in Gaines County, Choctaw Nation, in said Indian Territory, and described as follows: Beginning at a point in a creek and running nearly north, and about one mile southwest of John Adams' home place, and extending one mile in every direction, except where the same conflicts with claims covered by lease No. 27 of the Choctaw Coal and Railway Company, and lease No. 39, of the Choctaw Coal and Railway Company.

Coal claim and coal lease No. 35, by Moses Williams, John M. Grady, James F. Freeny, G. M. Bond and Robert J. Ward, to the Choctaw Coal and Railway Company, dated August 1st, 1889, and described as follows: What is known as claim No. 6 is located on the lava bed coal in Gaines County, Choctaw Nation, bounded on the northwest by claim No. 5 located by Freeny and Grady on the lava coal bed, and is about one and one-half miles northeast of a certain cabin owned by John Williams. Coal four feet or more in thickness, and extending one mile in every direction except where the same conflicts with other leases of the Choctaw Coal and Rail-
100 Company.

Coal claim and coal lease No. 36, by Moses Williams, John M. Grady, James F. Freeny, G. M. Bond and Robert J. Ward, to the Choctaw Coal and Railway Company, dated August 1st, 1889, and described as follows: What is known as claim No. 7, is bounded on the southwest by claim No. 6, located by Grady, Freeny and Williams, on the lava bed coal, and begins in a branch running no-rly south, about half a mile northeast of Moses Williams' home place, and about one-fourth mile northeast of an old saw mill; coal four feet or more in thickness, and extending one mile in every direction, except where the same conflicts with other leases of the Choctaw Coal and Railway Company.

Coal claim and coal lease No. 37, by Moses Williams, John M. Grady, G. M. Bond and Robert J. Ward, to the Chotcaw Coal and Railway Company, dated August 1st, 1889, and described as follows: What is known as claim No. 5, begins at a point about two miles southwest of Freeny and Grady's coal claim No. 6, on the lava bed coal, and is about two miles west of Moses Williams' home place, and is about one and one-half miles east of a certain cabin built by John Perry, and extends one mile in every direction, except where

the same conflicts with other leases of the Choctaw Coal and Railway Company.

Coal claim and coal lease No. 38, by Moses Williams, John M. Grady, G. M. Bond and Robert J. Ward, to the Choctaw Coal and Railway Company, dated August 1st, 1891, and described as follows: Beginning at a point in a branch and running nearly north through the John Adams prairie, and about two and one-half miles southeast of Jonas Durant's old place that he sold to Bud Pusley, and is about six hundred yards southwest of the round mound on the west side of the Tuskahoma road, and extending thence one mile in every direction except where the same conflicts with other leases of the Choctaw Coal and Railway Company.

Said coal claims No. 35 and 36 and 38 being the coal claims recorded by the parties above named in the records of Gaines county, Choctaw Nation, in record book No. 1, pages 227 to 230, inclusive.

Coal claim and coal lease No. 39, by Anetubbee and Ishilatubbee John M. Grady, James F. Freeny, G. M. Bond, Robert J. Ward, to the Choctaw Coal and Railway Company, and date- August 1st, 1889, and described as follows: A certain coal claim lying and being situated in Gaines county, Choctaw Nation, and in said
101 Indian Teritory, and described as follows: Beginning at a point on the southwest side of the John Adams' prairie, in a branch running northwest and about three miles southwest of John Adams' place, two miles north of Ishilatubbee's old place, and about one mile southeast of Jonas Durant's coal discovery on John Adams' prairie, and extending one mile in every direction, except where the same conflicts with other leases of the Choctaw Coal and Railway Company. The same being the coal claim recorded by the said parties in the records of Gaines county, Choctaw Nation, in record book No. 1, page 230. The said claim being operated by shaft No. 1 at Hartshorne, Indian Territory.

Coal claim and coal lease No. 40, by Ahotubbee, John M. Grady, J. F. Freeny, G. M. Bond and Robert J. Ward, to the Choctaw Coal and Railway Company, dated August 1st, 1889, and described as follows: Certain coal claims lying and being situated in Gaines county, Choctaw Nation, and in the said Indian Territory, and described as follows: What is known as the Ahotubbee discovery in the year 1870, beginning near the head of a gulch running northeast about one-half mile southwest of Moses Williams, place, and about four miles southwest of place of discovery on claim No. 7, owned by Grady, Freeny and Williams, in Gaines county, coal four feet or more in thickness, and extending one mile in every direction, except where said claim conflicts with other leases of the Choctaw Coal and Railway Company. The same being the coal claim recorded by said parties in the records of said Gaines county, Choctaw Nation, record book No. 1 on page 229.

Coal claim and coal lease No. 41, by Ahotubbee, John M. Grady, James F. Freeny, G. M. Bond and Robert J. Ward, to the Choctaw Coal and Railway Company, and dated August 1st, 1889, and described as follows: What is known as the Lupataw claim begins on the southeast bank of Brushy creek, and is bounded on the southwest

by the Simon James claim and on the northwest by the claims of McAlester, Hailey and others, and extending one mile in every direction, except where the same conflicts with other leases of the Choctaw Coal and Railway Company. The same being the coal claim recorded by the said parties in Gaines county, Choctaw Nation, in record book No. 1, page 229.

Coal claim and coal lease No. 42, by John M. Grady, James F. Freeny, G. M. Bond and Robert J. Ward, to the Choctaw Coal and Railway dated August 1st, 1889, and described as follows:

102 A certain coal claim lying and being situated in Gaines county, Choctaw Nation, and in the said Indian Territory, and described as follows: Beginning at a point near the head of a gulch running nearly west and about two miles southeast of Moses Williams' home place, and a mile northeast of Ahotubbee's old place on the east side of a branch running from Moses Williams' towards Jonas Durant's place and extending one mile in every direction, except where the same conflicts with other claims of the Choctaw Coal and Railway Company. The same being the coal claim recorded by the said parties in the records of Gaines county in the said Choctaw Nation in record book No. 1, page 227.

Coal claim and coal lease No. 43, by Simon James, Robert James, James F. Freeny, John M. Grady, G. M. Bond and Robert J. Ward, to the Choctaw Coal and Railway Company, dated August 1st, 1889, and described as follows: What is known as Simon James and John M. Grady's first discovery begins on the south side of Peaceable creek prairie, about one mile northwest of Brushy creek, and about a half mile northwest of Simon James' home place. Their second discovery begins in a well sunk in the yard of the said Simon James' home place. Coal known as the Brushy creek vein, and extending one mile thence in every direction, except where the same conflicts with other leases of the Choctaw Coal and Railway Company. The same being the coal claims recorded by the said parties in the record books of Tobucksey county, in the Choctaw Nation in record book B, on page 63.

Coal claim and coal lease No. 44, by Fritz Sittel to the Choctaw Coal and Railway Company, dated June 10th, 1889, and described as follows: What is known as coal claim No. 2, beginning at a point at or near the old Chin farm, one mile east of the town of McAlester, in said Tobucksey county, Choctaw Nation, Indian Territory, and extending one mile in every direction, except where the same conflicts with other claims of the Choctaw Coal and Railway Company.

Coal claim and coal lease No. 45, by Fritz Sittel, to the Choctaw Coal and Railway Company, dated June 10th, 1889, and described as follows: What is known as claim No. 12, beginning at a point on the bald prairie, otherwise known as the Halloway prairie, on a prong of Coal creek, heading near Bald hill, and about four

103 miles south of the Holloway place, and extending one mile in every direction from said beginning point, except where the same conflicts with other leases of the Choctaw Coal and Railway Company.

Coal claim and coal lease No. 46, by Fritz Sittel, to the Choctaw Coal and Railway Company, dated June 10th, 1889, and described

as follows: What is known as claim No. 14, beginning at a point one mile more or less southeast of what is known as the Frank Holloway place in the western half of Tobucksey county, Choctaw Nation, Indian Territory, which said beginning point is one-half mile due south of the farm known as the Gip Sexton place, and one-fourth of one mile east of the stream known as the Holloway creek, and extending one mile in every direction, except where said claim conflicts with other leases of the Choctaw Coal and Railway Company.

Coal claim and coal lease No. 47, by Fritz Sittel, to the Choctaw Coal and Railway Company, dated June 10th, 1889, and described as follows: What is known as claim No. 33, beginning at a point about one mile east of the Missouri, Kansas and Texas Railway, and about four miles in a northerly direction from the town of McAlester, said beginning point being marked by an outcropping of coal on a branch of Coal creek, and extending one mile in every direction, except where the same conflicts with other leases of the Choctaw Coal and Railway Company.

Coal claim and coal lease No. 48, by Fritz Sittel, to the Choctaw Coal and Railway Company, dated June 10th, 1889, and described as follows: What is known as claim No. 34 beginning at a point about one hundred yards west of the track of the Missouri, Kansas and Texas railway, and about four miles west of north from the town of McAlester. The said beginning point being marked by a development shaft made by D. L. Andrews, under the direction and while in the employ of said Fritz Sittel, and extending thence one mile in every direction, except where the same conflicts with other leases of the Choctaw Coal and Railway Company.

Coal claim and coal lease No. 49, by Fritz Sittell to the Choctaw Coal and Railway Company, dated June 10th, 1889, and described as follows: What is known as claim No. 35, beginning at a point about two miles south of west from the track of the Missouri, Kansas and Texas Railway, and about four and one-half miles in a northwesterly direction from the town of McAlester, the said beginning
104 point being marked by a shaft development made by D. S. Andrews under the direction and while in the employ of the said Fritz Sittel, and extending one mile in every direction, except where the same conflicts with other leases of the Choctaw Coal and Railway Company.

Coal claim and coal lease No. 50, by Fritz Sittel, to the Choctaw Coal and Railway Company, dated June 10th, 1889, and described as follows: What is known as coal claim No. 36, beginning at a point about five miles west of the town of McAlester, said beginning point being marked by a development shaft made by D. S. Andrews under the direction and while in the employ of the said Fritz Sittel, and extending thence one mile in every direction, except where the same conflicts with other leases of the Choctaw Coal and Railway Company.

Coal claim and coal lease No. 51, made by Fritz Sittel to the Choctaw Coal and Railway Company, dated June 10th, 1889, and described as follows: What is known as coal claim No. 37, beginning at a point about one mile west of Frank switch, on the Missouri, Kansas and Texas Railway, said beginning point being marked by

a development shaft made by D. L. Andrews, under the direction and while in the employ of the said Fritz Sittel, and extending thence one mile in every direction, except where the same conflicts with other leases of the Choctaw Coal and Railway Company.

Coal claim and coal lease No. 52, by Fritz Sittel to the Choctaw Coal and Railway Company, dated June 10th, 1889, and described as follows: What is known as coal claim No. 38, beginning at a point about one mile due south of what is known as Fritz Sittel's home place, and on what is known as the Tracy farm. Said beginning point being marked by an outcropping of coal on a branch of Sandy creek, and extending thence one mile in every direction, except where the same conflicts with other leases of the Choctaw Coal and Railway.

Coal claim and coal lease No. 53, by Fritz Sittel to the Choctaw Coal and Railway Company, dated June 10th, 1889, and described as follows: What is known as claim No. 39, beginning at a point about one and one-fourth miles southeast of what is known as old No. 9 shaft, the property of the Osage Coal and Mining Company. Said beginning point being marked by a development shaft made by D. L. Andrews while in the employ and under the direction of the said Fritz Sittel, and extending thence one mile in every
105 direction except where the same conflicts with the other leases of the Choctaw Coal and Railway Company.

Coal claim and coal lease No. 54, by Fritz Sittel to the Choctaw Coal and Railway Company, dated June 10th, 1889, and described as follows: What is known as claim No. 40, beginning at the head of Perryville prairie, or what is known as the Elm bank of Perryville creek. Said beginning point being marked by an outcropping of coal, and extending thence one mile in every direction except where the same conflicts with other leases of the Choctaw Coal and Railway Company.

Coal claim and coal lease No. 55, by Fritz Sittel, to the Choctaw Coal and Railway Company, dated June 10th, 1889, and described as follows: What is known as claim No. 41, beginning at a point on Perryville prairie near what is known as the Albert Crany Place, at the foot of what is known as Garner mountain, the said beginning point being marked by a development shaft made by D. L. Andrews under the direction of and while in the employ of the said Fritz Sittel, and extending thence one mile in every direction, except where the same conflicts with other leases of the Choctaw Coal and Railway Company.

Coal claim and coal lease No. 56, by Fritz Sittel to the Choctaw Coal and Railway Company, dated June 10th, 1889, and described as follows: What is known as claim No. 42, beginning at a point on Barnett prairie, at the foot of Bald mountain, the said beginning point being marked by a development shaft made by D. L. Andrews, under the direction and while in the employ of the said Fritz Sittel and extending thence one mile in every direction, except where the same conflicts with other leases of the Choctaw Coal and Railway Company.

Said coal claims Nos. 44 to 56 being the coal claims recorded by the said Fritz Sittel in the records of Tobucksey county, in the

said Choctaw Nation, in record book No. A, pages 547 to 550, 551 to 553, 554 to 559, 560 to 563, 564 to 565, 268, 242, 552, 524 to 528, 330 to 332, 535 to 540, 541 to 546.

Coal claim and coal lease No. 57, by W. B. Pitchlyn and Fritz Sittel to the Choctaw Coal and Railway Company, dated June 10th, 1889, and described as follows: What is known as claim No. 1, beginning at a point on Perryville prairie, in Tobucksey county, Choctaw Nation, Indian Territory, two and one-half miles west of the center point of Frank's switch, on the Missouri, Kansas and
106 Texas Railway, which said point is at the intersection of the Denison and Perryville wagon road, and which intersection is known as Dawson crossing, and is on what is known and described as the Fritz Sittel ranch, and extending thence one mile in every direction from said beginning point, except where the same conflicts with other leases of the Choctaw Coal and Railway Company.

Coal claim and coal lease No. 58, by W. P. Pitchlyn and Fritz Sittel to the Choctaw Coal and Railway Company, dated June 10th, 1889, and described as follows: What is known as coal claim No. 13, beginning at a point one and one half miles from where the section house used to be, about five miles north of McAlester. Said mine is situated one and one-half miles east of said old section house site, on Bogue-a-bucksy creek, and about two and one-half miles south of where said Bogue-a-bucksy creek empties into Coal creek, and extending one mile in every direction, except where the same conflicts with other leases of the Choctaw Coal and Railway Company.

Said claims Nos. 57 and 58 being the coal claims recorded by the said W. B. Pitchlyn and Fritz Sittel in the records, Book No. A, pages 313 to 447, inclusive.

Coal claim and coal lease No. 59, by John M. Grady, as guardian of Henry Freeny, and of the other children of Sarah Brady, deceased, to the Choctaw Coal and Railway Company, dated November 8th, 1892, and described as follows: Coal claim owned by J. M. Grady as guardian aforesaid, in Tobucksey county, Choctaw Nation, Indian Territory, the first place of discovery of which is known as Discovery No. 1, about one mile west of shaft No. 10, of the Osage Coal and Mining Company, and known as the Ashoma claim, which was purchased from the said Ashoma by said J. M. Grady, said point being 420 yards south of the Choctaw Coal and Railway track, and about two and one half miles east of South McAlester, and in the south side of a field in a sharp bend of a branch of Simpson creek, and half a mile east of the Grady farm; the second place of discovery of such coal claim is half a mile west of the said first point, on the same branch or creek, and on the west side of field known as Grady farm, about 200 feet south of the Choctaw Coal and Railway Company track, and at a point about two miles east of South McAlester, Indian Territory, such claims and this lease thereof shall extend one mile in every direction from either of said points of discovery, except where the same comes in contact with previous
107 leases made to the Osage Coal and Mining Company. Said coal claim being the claim recorded by said party on December 2nd, 1892, on pages 100 to 103, inclusive, in book C, Tobucksey

County records, and also recorded in the office of the Clerk of the United States court for Indian Territory, on December 5th, 1892, in book B, Misscellaneous Records, Mortgages and Liens, on page 173.

Coal claim and coal lease No. 60, by John M. Grady, and J. F. Freeny to the Choctaw Coal and Railway Company, dated November 8th, 1892, and described as follows: A coal claim owned by John M. Grady, *Grady* and J. F. Freeny, to the Choctaw Coal and Railway Company, dated November 8th, 1892, and described as follows: A coal claim owned by John M. Grady and J. F. Freeny, located in Gaines county, Choctaw Nation, Indian Territory, the place of discovery of which is at the outcrop of what is known as the Grady vein, and called discovery No. 16, situated about one and one-half miles southeast of No. 1 shaft, in the town of Hartshorne, and about two miles due west of the Durant gap. This lease extends for one mile in every direction from the place of discovery, except where it interferes with previous leases made to the Choctaw Coal and Railway Company. Said coal claim being the claim recorded by said parties in Record Book N, Miscellaneous Record Mortgages and Liens, pages 256 to 259, inclusive, in the office of the clerk of the United States Court for the Indian Territory, on February 9th, 1893.

Coal claim and coal lease No. 61, by John M. Grady and J. F. Freeny, to the Choctaw Coal and Railway Company, dated November 8th, 1892, and described as follows: A coal claim owned by John M. Grady and J. F. Freeny, located in Gaines county, Choctaw Nation, Indian Territory, the place of discovery of which is at a diamond drill bore hole, situated on the banks of what is known as Adams creek, about one and one-quarter miles southeast of the Adams home place, and about one mile due north of what is known as Round Top mountain, situated in the Grady basin, Gaines county. In this drill hole coal was discovered at a distance of 354 feet from the surface. This lease extends one mile in every direction from the place of discovery, except where it interferes with previous leases made to the Choctaw Coal and Railway Company. Said coal claim being the coal claim recorded in the office of the clerk of the United States Court for the Indian Territory, Second Judicial Divis-
108 ion, on the 9th day of February, 1895, in Book B, Miscellaneous Records Mortgages and Liens, pages 260 to 263.

Coal claim and coal lease No. 62, made by John M. Grady and J. F. Freeny, to the Choctaw Coal and Railway Company, dated November 8th, 1892, and described as follows: A coal claim owned by John M. Grady and J. F. Freeny, located in Gaines County, Choctaw Nation, Indian Territory, the place of discovery of which is at a diamond drill hole at the southwest corner of what is known as Pine Mountain, in the Grady basin, and about one-quarter of a mile east of Jonas Durant's house. Coal was found in this drill hole on said claim at a distance of 582 feet from the surface, and said coal discovery is recorded in the records of Gaines county by J. M. Grady and J. F. Freeny in record Book No. 4, page 52. This coal claim and lease extends one mile in every direction from the place of discovery. Said coal claim being the coal — recorded by the said parties in the office of the clerk of the United States court for the Indian Ter-

ritory, Second Judicial Division, on the 9th day of February, 1893, in Book B, Miscellaneous Record Mortgages and Liens, pages 264 to 267, inclusive.

Coal claim and coal lease No. 62, by John M. Grady and J. F. Freeny, to the Choctaw Coal and Railway Company, dated November 8th, 1892, and described as follows: A coal claim owned by John M. Grady and J. F. Freeny, located in Gaines county, Choctaw Nation and Indian Territory, the place of discovery of which is at a point about half a mile southwest of the Jonas Durant mineral spring, just on the south side of an old field. In this field said Grady and Freeny sunk a shaft four feet by six feet and twenty-three feet deep in the month of July, 1889, and found a vein of coal fourteen inches thick. Said Grady and Freeny then moved south about three hundred yards and sunk a hole eleven feet deep and found a vein of coal three feet and eight inches thick. As a further description of said lease, it is about half a mile east of the Tuskahoma and McAlester wagon road. Said coal claim and this lease thereof extends one mile in every direction from the point of discovery, except where it comes in contact with previous leases made to the said company. Said claim being the coal claim recorded in the office of the clerk of the United States Court for the Indian Territory, on
109 the 9th day of February, 1893, in book B, Miscellaneous Record Mortgages and Liens, pages 268 to 271 inclusive.

Coal claim and coal lease No. 64, by John M. Grady and J. F. Freeny, to the Choctaw Coal and Railway Company, and described as follows: Dated November 8, 1892. A certain coal claim owned by John M. Grady and J. F. Freeny, located in Tobucksey county, Choctaw Nation, and in the Indian Territory, the place of discovery of which is at a diamond drill hole, situated four hundred yards from the outcrop of the Alderson vein and about one mile south from the house formerly occupied by Jesse Carter, and about two hundred yards east of the old Fort Smith and Perryville road, at a point three hundred yards north of the crossing of the Choctaw Coal and Railway's line with said road. In this drill hole coal was found to be three feet and eight inches thick at a depth of three hundred and three feet. The coal claim covered by this lease extends one mile in every direction from the said diamond drill hole. Said coal claim being the claim recorded in the office of the clerk of the United States Court for the Indian Territory, on the 5th day of December, 1892, in Book B, Miscellaneous Record Mortgages and Liens, pages 176, and also recorded in the records of Tobucksey County, Choctaw Nation, Indian Territory, in Book C, pages 104 to 110 inclusive, on December 22, 1892.

Coal claim and coal lease No. 65, by Jesse Carter and John Taylor, dated August 15th, 1893, and described as follows: A certain coal claim, the point of discovery of which is in a branch of Brushy creek, under the first bridge west of the west trestle across Brushy creek bottom on the line of the Choctaw Coal and Railway Company in Tobucksey county, Choctaw Nation, which coal claim was recorded by the said Jesse Carter in about the year 1894, in the records of Tobucksey county, Choctaw Nation, Indian Territory, said coal

claim being the coal claim recorded in the office of the clerk of the United States court for the Indian Territory, on July 12, 1894, in —.

Coal claim and coal lease No. 66, by Wilson H. James, Cassie Carter and Mary Anacher, heirs over age of James Anacher, deceased, and Jesse Carter, as the husband of said Cassie Carter, and as guardian of Milone Anacher, the minor child of James and Phoebe Anacher, deceased, to the Choctaw Coal and Railway Company, dated August 15th, 1893, and described as follows: A certain coal claim the place of discovery of which is a few feet west of
110 the spring about 100 feet northwest of the old cabin built and occupied by Jackson Colbert, and about 100 yards northwest of section house No. 4, of the Choctaw Coal and Railway Company, about two miles due east of the Alderson station, extending from the said place of beginning one mile in every direction, said claim being the coal claim recorded in the office of the clerk of the United States court for the Indian Territory on the 12th day of July, 1894, in —.

Coal claim and coal lease No. 67, by John M. Grady and James F. Freeny to the Choctaw Coal and Railway Company, and dated August 16th, 1893, and described as follows: Commencing at a point about one and one-half miles northeast of Simon James' old place, and being one and one-half miles southwest of the old Lupataw coal discovery, which is the place of discovery of lease No. 41, of the Choctaw Coal and Railway Company, about one mile northwest of the Robertson James place, said place of discovery being marked by an exposure of coal and by bore holes made by John M. Grady and James F. Freeny, in the month of February or March, 1889, and extending from said beginning point one mile in every direction, except where the same conflicts with the Lupataw claim and the Simon James claim, being leases 41 and 43 of the Choctaw Coal and Railway Company. Said claim being the coal claim recorded in the office of the clerk of the United States Court for the Indian Territory, on July 12th, 1894, in —.

Coal claim and coal lease No. 68, by Ellis Noletubbe, Silas W. Neal and Wilson H. James, to the Choctaw Coal and Railway Company, dated September 4th, 1893, and described as follows: The first place of discovery being at a point about 500 yards more or less south of the abandoned shaft of the Osage Coal and Mining Company, known as New No. 8, said point being marked by an outcropping of coal three feet eight inches more or less in thickness, said cropping appears on the south bank of Rock or Simpson creek, and which said outcropping is about one and one-half miles more or less west of the slope opened by the Choctaw Coal and Railway Company at Alderson, known as Slope No. 1. Said coal claim being known as the Martin Anelatubbee claim, and being the coal claim recorded by Herbert M. Quinn, guardian of Ellis Anelatubbee, who was then the infant heir of Martin Anelatubbee, deceased, in the records of Tobucksey county, Book A, page 485. The second place of
111 discovery being at a point in a branch of Rock or Simpson creek, about 500 yards west of Judge Krebs' old house, and about 500 yards northeast of old shaft No. 8, being the same as new

No. 8, of the Osage Coal and Mining Co., and being about one mile west of Alderson Slope No. 1 on an outcropping of the vein now being worked by the Choctaw Coal and Railway Company through said slope No. 1. Said coal claim covered by this lease extends one mile in every direction from each of said places of discovery, except where it conflicts with the Norman claim and the compromise line on the west side of the Anacher coal claim. Said coal claim being the claim recorded in the office of the clerk of the United States court for the Indian Territory on July 12th, 1894, in — together with all rights, privileges and interests which the said Choctaw Coal and Railway Company has acquired of supplemental agreements to said leases No. 13, 30, 31, 32, 34, 46, 41, 42, 43, 60, 61, 62, 63 and 64, which supplemental agreement provides that the said Choctaw Coal and Railway Company shall pay the lessors the sum of $50.00 fifty dollars per year as a minimum royalty until such time as the said coal claim can be worked and operated by the said company. The said minimum royalties to be deducted from the first royalties earned after said claims or any of them are worked and operated by said company.

Coal claim and coal lease No. 69, by Lucinda Whitaker, widow of Simon Whitaker, deceased, the guardian of Eddy and William Whitaker, minor heirs of the said Simon Whitaker, and Edmond Whitaker, heir over age of said Simon Whitaker, to the Choctaw Coal and Railway Company, dated August 31, 1893, and described as follows: A certain coal claim discovered by Whitaker in about the year 1850 the place of discovery of which is in the spring in the Little Narrows, near the present town of Wilburton, and about fifty yards due east of the old Whitaker log house. Said Whitaker, in his life, gave and conveyed said coal claim and place to his son, Simon Whitaker, and upon the death of the said Simon Whitaker, seven or eight years ago, the same descended to his widow, Lucinda Whitaker, and his sons, Edmond Whitaker, aged 22 years, Eddy Whitaker, aged 17 years and William Whitaker, aged 12 years. That said Eddy and William Whitaker have been raised and taken care of by their mother, Lucinda Whitaker, and compose her family; that neither the
112 said Lucinda Whitaker, nor the said Edmond Whitaker, have ever sold or conveyed said claim or place to any one, nor parted with their interest in the same. Said coal claim extends one mile in every direction from said beginning point and place of discovery, and being the coal claim recorded by the said parties in the office of the clerk of the United States Court for the Indian Territory, second judicial division, on July 12, 1894, in —.

Coal claim and coal lease No. 70, by John Slaughter and Clara Slaughter, his wife, to the Choctaw Coal and Railway Company, dated September 1st, 1893, and described as follows: Commencing at a point in the bed of a branch or creek running nearly north and south, said point being about 250 yards west of the house where John Slaughter now lives, and about 550 yards west of the slope sunk by Mitchell upon this claim in the fall of 1890, and about one mile in a southerly direction from the school house on the south edge of Franklin prairie, known as the Spring Hill school house, and about

seven miles east of Wister Junction, in said Choctaw Nation. Said coal claim extending one mile in every direction from said beginning point, and being the coal claim recorded in the office of the clerk of the United States Court for the Indian Territory, second judicial division, on the 12th day of July, 1894, in —.

Coal claim and lease, William H. Secor to the Choctaw Coal and Railway, dated June 1st, 1889, and described as follows: A certain coal claim lying and being situated in Tobucksey county, Choctaw Nation, in said Indian Territory, and described as follows: Beginning at a point on Sandy Creek in the western half of Tobucksey county, Choctaw Nation, Indian Territory, one-half mile east of the farm known as the W. H. Secor place and extending one mile in every direction, the same being the claim recorded by the said W. H. Secor in the records of the said Tobucksey county in said Choctaw Nation, in record Book A, on page 484.

Coal claim and lease by Robert M. Miller, Maria Miller, Letisey Harkins, S. C. Lewis, Jackson Perus, Robert Carter, Josiah Garnder and Kingsbury Jackson, to the Choctaw Coal and Railway Company, dated February 4th, 1890, and described as follows: A certain coal claim lying and being situated in Tobucksey county, Choctaw Nation, said Indian Territory, and described as follows: Situated on Peaceable creek, about three hundred yards from said creek in a northerly direction and near the old meeting ground, and ex-
113 tending one mile in every direction, the same being the coal lease recorded by said parties in the records of Tobucksey county, Choctaw Nation, in record Book No. b.

Coal claim and lease by Becky Wesley, L. Worcester and Nicholas Worcester, to the Choctaw Coal and Railway Company, dated February 17th, 1890, and described as follows: A certain coal claim lying and being situated in Tobucksey county, Choctaw Nation, and described as follows: Lying and being situated in Peaceable creek, about one and one-half miles west of Kingsbury Hawkins' claim and one and one-half mile east of James Anacher's residence, and between Beck Wesley's residence and Bald Hill prairie, and extending one mile in every direction from said beginning point. The same being the coal claim recorded by the said parties in the records of Tobucksey county in said Choctaw Nation in record Book B.

Coal claim and lease by Robert J. Ward, Lemon Jack, Hampton Perry, Austin Nelson, Tom Folsom and John Slaughter, to the Choctaw Coal and Railway Company, dated April 8th, 1890, and described as follows: Certain coal claims lying and being situated in Sugar Loaf county, Choctaw Nation, and described as follows: Beginning at a point in Sugar Loaf county, Choctaw Nation, Indian Territory, and about twelve miles more or less east of the line of the St. Louis and San Francisco Railway, and about one-half mile south of the prospected line of the Choctaw Coal and Railway Company. Said beginning point being marked by an outcrop of coal 28 inches in thickness, found on Perry's farm, and extending one mile in every direction, the same being the coal claim recorded by said parties in the records of said Sugar Loaf county, in said Choctaw Nation, in Record Book A.

Coal claim and lease by William McCurtain to the Choctaw Coal & Railway Company, dated June 27th, 1899, and described as follows: An undivided one-half interest in a certain coal claim lying and being situated in Sugar Loaf county, Choctaw Nation, and in said Territory, and described as follows: Beginning at a point about six hundred yards in a southeasterly direction from the said William McCurtain's residence, marked by an outcrop in a ravine about sixty feet from where it, the said ravine, runs into a larger branch, and extending one mile in every direction from said beginning point. The same being the coal claim recorded by the said William McCurtain in the records of Sugar Loaf County, in said Choctaw Nation, in Record Book No. 2, page 241.

114 Coal claim and coal lease by Sampson McCurtain, to the Choctaw Coal and Railway Company, dated June 27th, 1889, and described as follows: An individed one-half interest in a certain coal claim lying and being situated in Sugar Loaf county, Choctaw Nation, and in said Indian Territory, and described as follows: What is known as said McCurtain's first discovery is situated at a point about eight hundred yards east of the Thomas Mitchell place, on the road leading from Red Oak to Gaston, in Sugar Loaf county, and extending one mile in every direction. What is known as said McCurtain's second discovery begins at a cropping in the side of a mountain about two hundred yards north of said Sampson McCurtain's residence and extending one mile in every direction, the same being the claim recorded by the said Sampson McCurtain in the records of Sugar Loaf county, Choctaw Nation, in record book No. 2, on pages 236 and 252.

Coal claim and lease No. 7, by Thomas Jefferson, Jr., to the Choctaw Coal and Railway Company, dated June 28th, 1889, and described as follows: An undivided one-half interest in a certain coal claim lying and being situated in Sugar Loaf county, Choctaw Nation and in the said Indian Territory, and described as follows: Beginning at a point marked by a cropping in a bank of a ravine that runs into Brazile creek, about one and one-half miles north of Sampson McCurtain's place, and about thirty yards from the southeast of said Thomas Jefferson's field, and extending one mile in every direction. The same being the coal claim recorded by the said Thomas Jefferson in the records of Sugar Loaf county, in said Choctaw Nation, in Record Book No. 2, page 255.

Coal claim and lease No. 8, by James Darden, to the Choctaw Coal and Railway Company, dated June 27th, 1889, and described as follows: An undivided one-half interest in a certain coal claim lying and being situated in Sugar Loaf County, Choctaw Nation, in said Indian Territory and described as follows: Beginning at a point in the bed of a creek or small branch marked by an outeropping and situated one mile west from said James Darden's residence on the road leading from Red Oak to Caston, in Sugar Loaf county, and extending one mile in every direction. The said Darden's second claim begins at a point about one mile south of his, said Darden's,

residence, and about four or five hundred yards north of the old Thomas Mitchell place, and is marked by a cropping in
115 a bluff of a small creek, and extending one mile in every direction. The same being the coal claim recorded by the said James Darden in the records of Sugar Loaf county, Choctaw Nation, in Record Book No. 2, on pages 245 and 250.

Coal claim and lease No. 9, by Wallace Jefferson, to the Choctaw Coal and Railway Company, dated June 27th, 1889, and described as follows: An undivided half interest in a certain coal claim lying and being situated in Sugar Loaf county, Choctaw Nation, and in said Indian Territory, and described as follows: Beginning at a point at or near the Brazile Creek, about one hundred and fifty yards south of Wallace Jefferson's residence, and being marked by an outcropping in a small creek near said Brazile Creek, and about two and one-half miles northeast of Red Oak store in Sugar Loaf county, near the dividing line of Sans Bois and Sugar Loaf counties, and extending one mile in every direction. The same being the coal claim recorded by the said Wallace Jefferson in the records of Sugar Loaf county, in said Choctaw Nation, Record Book No. 2, on page 243.

Coal claim and coal lease No. 10, by J. J. Moore, to the Choctaw Coal and Railway Company, dated June 28th, 1889, and described as follows: An undivided one-half interest in a certain coal claim lying and being situated in Sugar Loaf county, Choctaw Nation, and in said Indian Territory, and described as follows: Beginning at a point on a small creek that runs through the pasture of the said J. J. Moore, about three hundred yards south of the said J. J. Moore's store, at Red Oak, in Sugar Loaf county, and marked by an outcropping and development hole, in and near the bank of said creek, and extending one mile in every direction, the same being the claim recorded by the said J. J. Moore in the records of Sugar Loaf county, Choctaw Nation, in Record Book No. 2, on page 238.

Coal claim and lease No. 11, by R. O. Edmonds, to the Choctaw Coal and Railway Company, dated June 27th, 1889, and described as follows: An undivided and twenty-four twenty-fifths interest in a certain coal claim lying and being situated in Sugar Loaf county, Choctaw Nation, and in said Indian Territory, and described as follows: One claim is located about one mile, more or less, south of the Jack McCurtain old place, better know as old Red Oak, and crops out in the head of a creek about one-fourth of a mile north of the Nicholas McCurtain old place, and the other claim is situated about one-half mile north of the said Jack McCurtain old place,
116 and from the said beginning point the claim extends one mile in every direction. The same being the coal claim recorded by the said R. O. Edmonds in the records of Sugar Loaf county, Choctaw Nation, in Record Book No. 2, on page 247.

Coal claim and coal lease No. 12, by Jesse Carter and John M. Grady to the Choctaw Coal and Railway Company, dated August 1, 1889, citizens of Tobucksey county, Choctaw Nation, Indian Territory, and the Choctaw Coal and Railway Company, said leased lands lying and being situated in Gaines county, and acknowledged and

recorded in the office of William Nelson, clerk of the United States Court for the Indian Territory, at the town of Muskogee, August 1, 1889.

Coal claim and lease No. 13, by John R. James, to the Choctaw Coal and Railway Company, dated June 4, 1889, and also supplemental agreement to lease No. 13, by G. N. Riddle and Ola M. James, widow of John R. James, deceased, dated August 31, 1893, and described as follows: A certain coal claim lying and being situated in Gaines county, Choctaw Nation, Indian Territory, and described as follows: Beginning at a point in Gaines county, about two miles due north of George Riddle's residence, and about two hundred yards south of the old Ft. Smith and Boggy road, and about 400 yards southwest of the former home place of John R. James, commonly known as the old Albert Cheadle place, and extending one mile in every direction, the same being the coal claim recorded by said parties in the records of Gaines county, Choctaw Nation, in record book No. 1, on page 88.

Coal claim and coal lease No. 14, by Anderson King, Frank Holloway and Fritz Sittel to the Choctaw Coal and Railway Company, dated June 10th, 1889, and described as follows: Certain coal claims lying and being situated in Atoka county, Choctaw Nation, in said Indian Territory, and described as follows: What is known as claim No. 4, beginning at a point two miles southeast of Boggy creek and two miles southeast of the Nishetubby old place, and one mile and one-half south of the old Stonewall road, and extending one mile in every direction. What is known as claim No. 5, beginning at a point on a branch of North Boggy creek, one and a half miles north of the old Persley place, and one mile southeast of the Stonewall road, and from said beginning point extending one mile in every direction,
117 the same being the coal claim recorded by said parties in the records of said Atoka county, Choctaw Nation, in record book No. 1, page 553.

Coal claim and coal lease No. 15, by Robt. J. Ward and Fritz Sittel, to the Choctaw Coal and Railway Company, dated June 21, 1889, and described as follows: What is known as Sampson W. McCurtain discovery on claim No. 1 of this lease, is situated at a point about 800 yards east of the Thomas Mitchell place on the road leading from Red Oak to Caston in said Sugar Loaf county, and extending one mile in every direction. What is known as the J. J. Moore discovery on claim No. 2 of this lease is situated on a small creek that runs through the pasture of J. J. Moore, about three or four hundred yards south of the said J. J. Moore's store at Red Oak, in Sugar Loaf county, and marked by an outcropping and development hole in and near the bank of said creek, and extending one mile in every direction. What is known as William McCurtain's discovery on claim No. 3 of this lease is situated in Sugar Loaf county, about 600 yards in a southeasterly direction from the said William McCurtain's residence, and is marked by an outcropping in a ravine about thirty feet from where the said ravine runs into a large branch, and extending one mile in every direction. What is known as the Wallace Jefferson discovery of claim No. 4 of this lease is situated — or near

Brazile creek, about 150 yards south of said Wallace Jefferson's residence, and marked by an outcropping in a small creek near said Brazile creek about two and one-half miles northwest of Red Oak store, in Sugar Loaf Co., and near the dividing line of Sans Bois and Sugar Loaf counties, and extending one mile in every direction. What is known as James Darden's discovery of claim No. 5, of this said lease is situated one mile west from said James Darden's residence on the road leading from Red Oak to Caston, in Sugar Loaf county, and is marked by an outcropping in a bed of a small branch or creek and extending one mile in every direction. What is known as James Darden's second discovery or claim No. 6, of this lease, begins at a point about one mile south of said James Darden's residence, and about four or five hundred yards north of the old Thomas Mitchell place, and is marked by a cropping in a slate bluff of a small creek and extending one mile in every direction. What is known as Sampson McCurtain's second discovery, or claim No. 7, of this lease, begins at an outcropping in the side of a mountain about 200 yards north of said Sampson W. McCurtain's residence, and extending one mile in every direction. What is known as Thomas Jefferson's first discovery or claim No. 8, of this lease, begins at a point marked by a cropping on a bank of a ravine running into Brazile creek, about one and one-half miles north of Sampson W. McCurtain's residence, and about thirty yards from the southeast corner of said Thomas Jefferson's field, and extending one mile in every direction. The same being the coal claims recorded by the said Robert J. Ward and Fritz Sittel in the records of Sugar Loaf county, Choctaw Nation, Indian Territory, in Record Book No. 2, on pages 236, 243, 250, 258, 245, 252, 241, 247 and 255.

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Coal claim and coal lease No. 16, by Isham Christy and John R. James, to the Choctaw Coal and Railway Company, dated June 4th, 1889, and described as follows: Certain coal claims lying and being situated in Gaines county, Choctaw Nation, in said Indian Territory, and described as follows: What is known as claim No. 21, beginning at a point three miles east of north from the old Riddle Station, in Gaines county, and about two miles due north of the old Ft. Smith and Boggy road, and Fourche Maline creek, and from said beginning point, marked by the foundation of a dwelling house constructed by Isham Christy, the said claims extend one mile in every direction. What is known as claim No. 22, beginning at a point one and one-half miles east of the eastern terminus of a certain coal claim previously located by the said Isham Christy, and John R. James, the beginning point of which said previously located coal claim is the foundation of a dwelling house constructed by Isham Christy about three miles east of north from the crossing of the old Fort Smith and Boggy road and Fourche Maline creek, and extending one mile in every direction. What is known as claim No. 23, beginning at a point about one and three-fourths miles northwest of the western terminus of a certain coal claim previously located by the said Isham Christy and John R. James, the beginning point of which said previously located and recorded claim is the foundation of a dwelling house constructed by the said Isham Christy and about three miles

north of east from the old Riddle station and about two miles due north from the crossing of the old Ft. Smith and Boggy road and Fourche Maile creek, and extending one mile in every direction; the claims recorded by the said Isham Christy and John R. James in the records of said Gaines county, in said Choctaw Nation
119 in the Indian Territory, in record book No. 1, page 87.

Coal claim and coal lease No. 17, by M. H. Gleason, John M. Grady, R. O. Edmonds and John Denton to the Choctaw Coal and Railway Company, dated March 7, 1890, and described as follows: A certain coal claim No. 2, lying and being situated in Sugar Loaf county, Choctaw Nation and described as follows: Beginning at a point about two miles east of claim No. 1, and on the north side of a mountain running east and west with the big Fourche Maline creek, and about one and three-quarters miles south of the main road running from Ft. Smith to Stringtown, Ind. Ter., and extending one mile in every direction, the same being the coal claim recorded by the said parties in the records of Sugar Loaf county, Choctaw Nation, Ind. Ter., in Record Book No. —.

Coal claim and coal lease No. 18, by M. H. Gleason, R. O. Edmonds and John Denton, to the Choctaw Coal and Railway Company, dated March 7, 1890, and described as follows: A certain coal claim No. 3 lying and being situated in Sugar Loaf county, Choctaw Nation, and described as follows: Beginning at a point one and one-fourth miles east of coal claim No. 2, and on the north side of the Big Fourche Maline creek, and about one and one-half miles south of the Red Oak store, and extending one mile in every direction, the same being the coal claim recorded by the said parties in the Records of Sugar Loaf County, Choctaw Nation, Indian Territory, in Record Book No. —.

Coal claim and coal lease No. 19, by M. H. Gleason, John M. Grady, James F. Freeny, R. O. Edmonds, and John Denton, to the Choctaw Coal and Railway Company, dated March 7th, 1890, and described as follows: A certain coal claim No. 1 lying and being situated in Sugar Loaf Co., Choctaw Nation, and described as follows: Beginning at a point on or near about one mile east of the Fourche Maline creek, nearest point, and on the north side of the mountain running east and west with the Big Fourche Maline creek and about two miles south of the main road running from Ft. Smith, Ark., to Strington, Ind. Ter., and extending one mile in every direction from beginning point, the same being the coal claim recorded by the said parties in the records of Sugar Loaf county, Choctaw Nation, Ind. Ter., in Record Book No. —.

Coal claim and coal lease No. 20, by Hubbard Quincy, guardian of Elias Anolatubbee, infant heir of Martin Anolatubbee, de-
120 ceased, to the C. C. & Ry. Co., dated December 2, 1889, and described as follows: A certain coal claim lying and being situated in Tobucksey county, Choctaw Nation, and described as follows: Beginning at a point about five hundred yards more or less south of the abandoned shaft of the Osage Coal and Mining Co., known as new No. 8, the said beginning point being marked by an outcrop of coal three feet eight inches more or less in thickness,

which said outcrop appears on the south side of a small tributary of Rock or Simpson creek, and about one and one-half miles more or less west of the slope opened by the C. C. & Ry. Co. on the claim of John M. Grady, and others, and the said claim marked by said outcropping being known as the Mailen Anolatubbee claim, the same extending one mile in every direction and being the coal claim recorded by *by* the said Hubbard M. Quincy, as guardian, in the records of said Tobucksey county, Choctaw Nation, in record book No. A, page 485.

Coal claim and coal lease No. 21, by M. H. Gleason, R. O. Edmonds, Morris Green and Joshua McCurtain, to the C. C. & Ry. Co., dated March 7, 1890, and described as follows: A certain coal claim No. 6, lying and being situated in Sugar Loaf Co., Choctaw Nation and described as follows: Beginning at a point on or about two miles east of said coal claim No. 5, and north of the mountain running east and west with the Big Fourche Maline creek, and about one and one-half miles southeast of where old man William McCurtain now lives, and about one hundred yards east of Turkey creek, and extending one mile in every direction, the same being the coal claim recorded by the said parties in the records of Sugar Loaf county, Choctaw Nation, in Record Book No. —.

Coal claim and coal lease No. 22, by M. H. Gleason, R. O. Edmonds, Morris Green, Harvey Leflore, to the C. C. & Ry. Co., dated March 7, 1890, and described as follows: A certain coal claim No. 7, lying and being situated in Sugar Loaf county, Choctaw Nation, and described as follows: Beginning at a point on or about one and one-half miles east of coal claim No. 6, and north of the mountains running east and west with the Big Fourche Maline creek, and about one and one-fourth miles east of the road running from Red Oak to Caston, I. T., and extending one mile in every direction, the same being the coal claim recorded by the said parties in the records of
121 Sugar Loaf county, in the Choctaw Nation, in Record Book No. —.

Coal claim and coal lease No. 23, by R. O. Edmonds, M. H. Gleason and R. B. Coleman, to the C. C. & Ry. Co., dated March 7, 1890, and described as follows: A certain coal claim No. 8 lying and being situated in Gaines county, Choctaw Nation, I. T., and described as follows: Beginning at a point about three-fourths of a mile south of Gov. Bryant's old place on the Ft. Smith and Springtown road, and about half a mile west of Little Fourche Maline creek, where it runs through the gap of the mountain that runs east and west with the big Fourche Maline Creek, and on the north side of said mountain and extending one mile in every direction, the same being the claim recorded by the said parties in the records of Gaines county, Choctaw Nation, in Record Book No. —.

Coal claim and coal lease No. 24, by M. H. Gleason, John M. Grady, R. O. Edmonds and John Denton, to the C. C. & Ry. Co., and dated March 7, 1890, and described as follows: A certain coal claim No. 9 lying in and being situated in Gaines Co., Choctaw Nation, and described as follows: Beginning at a point on or about one-fourth of a mile north of the road running from the Concatub-

bee's old place to Little Fourche Maline creek, and about one and one-fourth miles west of where the old Ft. Smith and Stringtown road crosses the said Little Fourche Maline creek, and extending one mile in every direction, the same being the coal claim recorded by the said parties in the records of Gaines county, Choctaw Nation, in Record Book No. —.

Coal claim and coal lease No. 25, M. H. Gleason, R. O. Edmonds and John Denton, to the C. C. & Ry. Co., dated March 7, 1890, and described as follows: A certain coal claim No. 4, lying and being situated in Sugar Loaf county, Choctaw Nation, and described as follows: Beginning at a point one and three-fourths miles west of claim No. 3 and on the north side of the mountains and about three hundred yards east of the road running across the mountain from the Red Oak store to Leflore station, I. T., and extending one mile in every direction the same being the claim recorded in the records of Sugar Loaf county, Choctaw Nation, in Record Book No. —.

Coal claim and coal lease No. 26, by M. H. Gleason, Morris Green, R. O. Edmonds and John Denton, to the C. C. & Ry. Co.,
122 dated March 7, 1890, and described as follows: A certain coal claim No. 5 lying and being situated in Sugar Loaf county, C. N., I. T., and described as follows: Beginning at a point on the north side of the mountains running east and west with the Big Fourche Maline creek, and about one and one-fourth miles south of the road running from Red Oak store to Caston, I. T., and extending one mile in every direction, the same being the coal claim recorded by the said parties in the records of Sugar Loaf county, C. N., in record Book No. —.

The above and foregoing leases from 1 to 26, inclusive, and the following described leases from 27 to 51, inclusive, are covered by the Million Dollar mortgage, dated December 1st, 1890, between the C. C. & Ry. Co., and the Girard Life Insurance Annuity & Trust Co., of Philadelphia, Pa. The above described coal leases and coal claims numbered 27 to 58, inclusive, are covered by the $500,000.00 coal mortgage, dated January 14, 1890, between the C. C. & Ry. Co. and the Girard Life Insurance Annuity & Trust Co., of Philadelphia, Pa., and the said coal leases and coal claims numbered from 26 to 58 inclusive are also covered by the ten million dollar mortgage of date January 15, 1890, between the C. C. & Ry. Co., and the Girard Life Insurance Annuity & Trust Co., of Philadelphia, Pa., and the remainder of said coal claims and coal leases have been executed and delivered to the said company since the execution of said mortgage, and during the receivership of said company.

Lease No. 27, bearing date of Aug. 1, 1889, between John M. Grady and J. F. Freeny, citizens of Tobucksey Co., C. N., I. T., and C. C. & Ry. Co., said leased lands lying and being situated in Gaines Co., acknowledged and recorded in the office of William Nelson, clerk of the U. S. court for the Ind. Ter., at the town of Muskogee, Aug. 1, 1889.

Lease No. 28, bearing date of Aug. 1, 1889, between John M. Grady, a citizen of Tobucksey Co., C. N., I. T., to the C. C. & Ry. Co., said leased lands being situated in Tobucksey Co., acknowledged and

recorded in the office of Wm. Nelson, clerk of the United States Court for the I. T., at the town of Muskogee, Aug. 1, 1889.

Lease No. 29, bearing the date of Aug. 1, 1889, between John M. Grady and James F. Freeny, citizens of Tobucksey county, C. N., I. T., and the Choctaw Coal & Ry. Co. Said leased lands
123 lying and being situated in Gaines county, acknowledged and recorded in the office of Wm. Nelson, clerk of the U. S. Court for the I. Ter., at the town of Muskogee, Aug. 1, 1889.

Lease No. 30, bearing date Aug. 1, 1889, between John M. Grady and J. F. Freeny, citizens of Tobucksey county, Choctaw N., I. T., and the C. C. & Ry. Co., said leased lands lying and being situated in Gaines county, acknowledged and recorded in the office of Wm. Nelson, clerk of the U. S. Court for the I. T. at the town of Muskogee, Aug. 1, 1889.

Lease No. 31, bearing date Aug. 1, 1889, between John M. Grady and J. F. Freeny, citizens of Tobucksey county, C. N., I. T., and the C. C. & Ry. Co., said leased lands lying and being situated in Gaines county, acknowledged and recorded in the office of Wm. Nelson, clerk of the U. S. Court for the I. T. at the town of Muskogee, Aug. 1, 1889.

Lease No. 32, bearing date June 27, 1889, between Sampson W. McCurtain, a citizen of Sugar Loaf Co., C. N., I. T., and the C. C. & Ry. Co., said leased lands lying and being situated in Sugar Loaf Co. Acknowledged and recorded in the office of Wm. Nelson, clerk of the U. S. Court for the I. T., at the town of Muskogee, on the 29th day of Aug., 1889.

Leases No-. 33 to 38, inclusive, bearing date 8th April, 1890, between Robert J. Ward, Leman Jack, Hampton Perry, Austin Nelson, Tom Folsom, and John Slaughter, citizens of Wade, Sugar Loaf and Scullyville counties, C. N., I. T., and the C. C. & Ry. Co., said leased lands lying and being situated in Sugar Loaf county, acknowledged and recorded in the office of Wm. Nelson, clerk of the U. S. Court for the I. T., at the town of Muskogee, Apl. 8, 1889.

Lease No. 39, beaing date June 27, 1889, between James Darden, citizen of Sugar Loaf Co., C. N., I. T., and the C. C. & Ry. Co., said leased lands lying and being situated in Sugar Loaf Co., acknowledged and recorded in the office of Wm. Nelson, clerk of the U. S. Court, at the town of Muskogee, Aug. 29, 1889.

Lease No. 40, bearing date June 27, 1889, between R. O. Edmonds, a citizen of Sugar Loaf county, C. N., I. T., and the C. C. & Ry. Co., said leased lands lying and being situated in Sugar Loaf county, acknowledged and recorded in the office of Wm. Nelson, clerk of the U. S. Court, at the town of Muskogee, Aug. 29, 1889.

Lease No. 41, bearing date of June 10, 1889, between An-
124 derson King, Frank Holloway and Fritz Sittel, citizens of Tobucksey county, C. N., I. T., leased lands lying and being situated in Atoka Co., acknowledged and recorded in the office of Wm. Nelson, clerk of the U. S. Court for the I. T., at the town of Muskogee, June 10, 1889.

Leases No-. 42 to 48, inclusive, bearing date the 21st of June, 1889, between Robert J. Ward and Fritz Sittel, citizens of Scully-

ville and Tobucksey counties, C. N., I. T., and the C. C. & Ry. Co., said leased lands lying and being situated in Sugar Loaf county, acknowledged and recorded in the office of Wm. Nelson, clerk of the U. S. Court at the town of Muskogee, Aug. 29, 1889.

Leases No. 49 to 50, bearing date of June 4, 1889, between Isham Christy and John R. James, citizens of Gaines county, C. N., I. T., and the C. C. & Ry. Co., said leased lands lying and being situated in Gaines county. Acknowledged and recorded in the office of Wm. Nelson, clerk of the U. S. Court for the Indian Territory, at the town of Muskogee, June 4, 1889.

Lease No. 51, bearing date August 1, 1889, between James Anacher and John M. Grady, citizens of Tobucksey county, C. N., I. T., and the C. C. & Ry. Co., said leased lands lying and being situated in Tobucksey county, acknowledged and recorded in the office of Wm. Nelson, clerk of the United States court for the Indian Territory, at the town of Muskogee, Aug. 1, 1889.

Lease No. —, dated Aug. 1, 1889, James Analure, John M. Grady, as guardian of Henry Freeny, a minor, Joseph Gardner, G. M. Bond and James J. McAlester, to the Choctaw Coal and Railway Company, consideration $1.00. Beginning at a slope on the James Analure coal claim, lying about one and one-half miles east of the Osage Coal & Mining Co.'s shaft known as shaft No. 10, and extending one mile in every direction from said beginning point. Being the coal claim discovered by James Anacher and recorded by him in the records of Tobucksey county, in Book A, 485, and described as follows: Coal discovered by James Anacher in the year 1858, in Tobucksey county, Ind. Ter., about five hundred feet southwest of what is known as Grady slope, and another one due south from the first place of discovery, about 400 yards and another one 300 yards south of Grady slope, and east of the first discovery. These discoveries are all marked by outcrops of coal, and all persons are notified that I claim a mile in every direction from the place of discovery, as allowed by
125 the constitution of the Choctaw Nation. Said lease recorded in Book B, 72-76, Aug. 7, 1889, acknowledged before Wm. Nelson, clerk, Aug. 1, 1889. The above coal claim is the one operated by Slope No. 1, at Alderson, I. T.

The above decree was objected to by the plaintiff, as being incompetent, irrelevant and immaterial, which objection was by the court overruled, to which ruling of the court the plaintiff excepted.

The Supplemental Report of Yancey Lewis, Esq., Special Master Commissioner.

The special master commissioner would further report that in pursuance of the decree of confirmation entered upon the 11th day of September, 1894, the undersigned attended — at the office of the Finance Company, of Pennsylvania, in the city of Philadelphia, Pennsylvania, upon the 3rd day of October, that being the day agreed upon between the parties to receive payment of the balance of the purchase money for the property and franchises of the Choctaw Coal and Railway Company.

At that meeting there were present Geo. H. Earle, Jr., Sidney F. Tyler, Francis I. Gowen, N. Thouron and George B. Kirkbride, the purchasers of the property, and Samuel Dickson, Esq., of counsel, and upon that and the following days, to-wit, the fourth, fifth and sixth of October, the undersigned continued to meet and confer with the parties named, and with the board of directors of the Choctaw, Oklahoma and Gulf Railroad Company, that being the name of the company organized by said purchasers under the act of congress of August 24, 1894, to take the title thereto.

The purchasers produced and offered, in part payment in accordance with the terms of the decree, the notes of the Choctaw Coal and Railway Company amounting to $2,214,000.00, secured by the pledge of the $500,000.00 coal mortgage bonds of the Choctaw Coal and Railway Company, issued under and secured by a mortgage dated January 14, 1890, between the Choctaw Coal and Railway Company, and the Girard Life Insurance Annuity & Trust Company of Philadelphia, trustee, and by $1,600,000.00 of the bonds issued under the $10,000,000.00 mortgage between the same parties, dated January 15, 1890, and $904,000.00 of bonds secured by a mortgage between the same parties upon certain coal lands dated December 1, 1891, the said mortgage bonds constituting all of the mort-
126 gage indebtedness of the Choctaw Coal and Railway Company.

The notes of the Choctaw Coal and Railway Company, constituting the principal indebtedness for which the bonds were held as collateral were stamped by me with a stamp bearing the words, "Dividend paid October 3rd, 1894," and were returned to the possession of the Finance Company of Pennsylvania, the depository under the plan and agreement of reorganization.

The said purchasers also produced $717,000.00 Receiver's Certificates, which were destroyed by cancellation in the presence of myself and the receivers, these certificates, together with the accrued interest thereon, which amounted to $13,683.24, having been paid out of the proceeds of the sale.

At a meeting held at the office of Samuel Dickson, Esq., upon the 5th day of October, the account of the Girard Life Insurance Annuity & Trust Co., of Philadelphia, for reimbursement of advance made in the preservation and protection of the property during the pending litigation, and for compensation for the services of itself and counsel was presented. A detailed statement of the disbursements was produced and verified by the president of that company, and the receiver, through whom the money had been paid out. These advances were made in the early stages of the receivership to enable the receiver to pay arrears of royalty due under the coal leases, wages of the receiver's employés, for the expense of the litigation, including additional compensation to the receiver as agreed upon, and for other purposes, and the items having been fully considered and discussed by the members of the purchasing committee, and the board of directors of the Choctaw, Oklahoma and Gulf Railroad Company, they being all the parties in interest, were assented to and approved by them, and payment made out of the purchase money

by check upon the fund which had been placed to the joint order of the receiver and myself, in the Fourth Street National Bank of Philadelphia. These payments amounted to the additional sum of $85,137.27. The compensation of the undersigned, the special master commissioner, for making the sale of the property and attending at Philadelphia for a settlement of the accounts with the purchaser was fixed by agreement at $4,000 and expenses, the undersigned as requested to take the same from the amount received by him as earnest money at the day of sale, and now
127 deposited to his credit in the State National Bank, of Denison, Texas.

A statement produced to me by the receiver, and prepared by his accountants, shows that receiver's certificates to the amount of $123,225.00 were still outstanding and unpaid, and that the further indebtedness of the receivership does not exceed the sum of $150,000 and an amount in cash equal to the aggregate of these two sums, less the sum of $46,000, which will be available out of the sum now on deposit at the State National Bank of Denison, Texas, is now on deposit to the joint credit of the undersigned and the receiver, in the Fourth Street National Bank, of the city of Philadelphia, to be applied to the payment of the receiver's certificate still outstanding, with accrued interest thereon to October 1st, inst., when and as presented, such certificates when thus paid to be cancelled by the said bank, and then produced to the undersigned, and the remainder of said fund to be paid out upon checks signed by the receiver and myself in settlement of the balance of the receiver's indebtedness.

Deducting the indebtedness of the receivership and the costs of the cause, including the compensation of the trustee and the advances made by it for the preservation of the property, the balance available for distribution among the creditors of the company cannot possibly exceed the sum of $2,500,000.00.

The notes of the Choctaw Coal and Railway Company, for which the mortgage bonds were held for collateral, amounting as already stated, in the aggregate to $2,214,000.00, and the interest thereon to September 8th, 1894, the date of sale, to $540,704.00, making an aggregate indebtedness of the company transferred under the plan or agreement of reorganization to the purchasing committee and entitled to be used in payment of the bid of $2,754,704.00, this would realize a dividend of approximately 90 per cent., leaving a balance still due of (about) $254,704.00.

It was not thought necessary to enter into a careful calculation of the percentage, in view of the fact that all the claims of the receivership were paid or provided for, and all claims against the Choctaw Coal and Railway Company are in possession of and under the control of the purchasing committee, and now amount in the aggregate to considerably more than sufficient to absorb the balance of the amount after payment of the debts of the receivership.
128 Payment having thus been made by the purchasers, the undersigned executed, acknowledged and delivered to them in conjunction with the Choctaw Coal and Railway Company, on

October 3rd, inst., the deed of conveyance in the form approved by this honorable court.

It should also be noted that under the terms of the decree and of the deed of conveyance from the undersigned and the Choctaw Coal and Railway Company to the purchasers, the title taken by them is subject to the indebtedness of the receivership, lawfully incurred and not satisfied out of the proceeds of said sale, and further subject to all executory contracts made by the receiver under authority of court.

The undersigned would accordingly recommend that the accompanying decree of further confirmation be entered.

All of which is respectfully submitted.

YANCEY LEWIS,
Special Master Commissioner.

Approved:

CHAS. B. STUART, *Judge.*

Which supplemental report of the special master commissioner was objected to by the plaintiff, as being incompetent, irrelevant and immaterial, which objection was by the court overruled, to which ruling of the court the plaintiff at the time duly excepted.

No. 196.

LANGHORNE WISTER
vs.
C. C. & RY. CO.

Final Decree of Confirmation of Sale of Property.

October 13, 1894, this cause came on to be further heard upon the supplemental report of Yancey Lewis, Esq., special master commissioner, and it appearing that the purchasers had paid the balance of their bid, by the surrender of the receiver's certificates and other obligations of receivership, except to the extent to which they had deposited cash to the joint order of the special master commissioner and receiver, and by the surrender of the notes of the company, secured by the pledge of all its outstanding mortgage bonds under the several mortgages issued by it, and duly recorded as liens upon the rail road and corporation defendant, and that the amounts payable as part of the expenses of receivership and as costs of the cause to the trustee, and counsel and special master commis-
129 sioner have been verified by the trustee and the receiver, and approved by the purchasers, and the board of directors of the Choctaw, Oklahoma and Gulf Railroad Company, they being all the parties in interest, it is, therefore, ordered, adjudged and decreed that all and singular the proceedings of the special master commissioner, as set forth in his supplmental report, be and the same are hereby confirmed and approved, and the execution and delivery to the purchasers of the deed of conveyance of the railroad property and franchises sold to them be also approved, and in pursuance of

the former decree of this court, possession of the railroad property and franchises mentioned and described in such decrees, report of sale and deed of conveyance, shall vest in said purchasers, and the receiver shall and will hand over and deliver to them the said railroad property and franchises including all outstanding accounts and other property mentioned and described in said original decree of sale and the deed of conveyance made in pursuance thereof, and the receiver is further ordered to pass his final accounts before the master with all convenient speed.

Approved.

(Signed) CHAS. B. STUART, *Judge.*

To the introduction of which decree, the plaintiff then and there at the time objected, because the same was incompetent, irrelevant and immaterial, which objection was by the court overruled, to which ruling of the court the plaintiff then and there duly excepted.

And defendant thereupon introduced the report of the master in case Edwin D. Chadick, Trustee, *vs.* Receivers of the Choctaw Coal and Railway Company.

(Said report appears as Exhibit A to defendants' answer, and is to be considered in evidence.)

(See transcript page 47.)

And plaintiff ob*l*ects to the introduction of said report for the reason that the same is incompetent, irrelevant and immaterial, and that the plaintiff herein was not a party to said procee-ings, which objection is by the court overruled, to which ruling the plaintiff excepts.

The decree of the United States Court, in case of Edwin D. Chadick *v.* Receivers Choctaw Coal and Railway Company as follows:

(Said report appears as an exhibit to plaintiff's second
130 amended complaint, and is to be considered in evidence.

(See transcript page 26.)

And on Thursday, May 29, 1902, the same being a day of the regular April, 1902 term of said court, the following order was made and entered of record in said cause, to-wit:

1622.

W. H. ANSLEY
vs.
F. I. GOWEN, Rec., ET AL.

Complaint in Equity.

On this, the 29th day of May, 1902, the same being one of the days of the regular April, 1902, term of this court, this cause came on for trial, the plaintiff being present in person and represented by attorney, W. N. Redwine, Esq., and the defendant appearing by attorney, C. B. Stuart, Esq., and the court, after hearing all the evidence and the argument of counsel finds that the plaintiff should take nothing by this suit, and that the defendant should have judgment for his costs herein expended.

It is, therefore, by the court, considered, ordered, adjudged and decreed that the plaintiff herein, W. H. Ansley, take nothing by this suit, and it is further ordered and decreed that the defendant, F. I. Gowen, Rec., have and recover of and from the plaintiff all his costs herein laid out and expended, to all of which plaintiff excepts, and prays an appeal to the U. S. Court of Appeals for the Indian Territory, which is by the court granted.

UNITED STATES OF AMERICA,
Indian Territory, Central District.

I, E. J. Fannin, clerk of the United States Court within and for said district, hereby certify that the above and foregoing contains a true and correct copy of the record and proceedings had on the trial of the cause of W. H. Ansley, plaintiff, *vs.* Francis I. Gowen *et al.*, defendant-, pending in said court, as the same appears from the record and files of my office, at South McAlester, Indian Territory.

Witness my hand and seal of said court, this August, 25, 1902.

[SEAL.] E. J. FANNIN, *Clerk*,
By W. C. DONNELLY, *D. C.*

131 No. 472. W. H. Ansley, Appellant, *vs.* J. W. McLoud *et al.*, Appellees. Filed in the Office — the Clerk of the United States Court of Appeals, Indian Territory, this 25th day of August, A. D. 1902. Wm. P. Freeman, Clerk.

UNITED STATES OF AMERICA, *Indian Territory:*

In the Court of Appeals, *ss:*

W. H. ANSLEY, Appellant,
vs.
J. W. MCLOUD, Trustee, and FRANCIS I. GOWEN, Receiver, Appellee.

Whereas, the appellant, W. H. Ansley, has taken an appeal from the judgement of the United States Court for the Central District, rendered at its May term, 1902, against W. H. Ansley, appellant, in favor of the appellee, J. W. McLoud, Trustee, and Francis I. Gowen, Receiver, for the sum of — dollars, and costs, and the appellant desire- to supersede said judgment now C. Springer and T. J. Phillips, sureties, hereby covenant with the said appellee that the said appellant will pay to the appellee all costs and damages that may be adjudged against the appellant on the appeal, or in the event of the failure of the appellant to prosecute said appeal to a final judgment in the Court of Appeals, or if said appeal shall for any cause be dismissed, that said sureties shall pay to the appellee all costs and damages, and shall perform the judgment of the court appealed from; also that said appeal shall be prosecuted without delay; also that they will satisfy and perform the judgment or order appealed from in case it should be affirmed, and any judgment or order

which the Court of Appeals may render, or order to be rendered by the inferior court, not exceeding in amount or value the original judgment or order, and all rents or damages to property during the pendency of the appeal of which the appellee is kept out of possession by reason of the appeal.

Witness our hands this 21st day of August, 1902.

W. H. ANSLEY,
C. SPRINGER,
T. J. PHILLIPS.

Approved:

WM. P. FREEMAN, *Clerk.*

132 We, and each of us do solemnly swear we are worth over and above all our liabilities and exemptions from executions, the sum of five hundred dollars as we verily believe.

C. SPRINGER.
T. J. PHILLIPS.

Subscribed and sworn to before me, this 21st day of August, 1902.

[SEAL.] H. B. MILLER,
Notary Public.

My commission expires Dec. 18, 1904.

Endorsed: No. —. In the Court of Appeals. W. H. Ansley, Appellant, *vs.* J. W. McLoud, Trustee, and Francis I. Gowen, Receiver, Appellee-. Supersedeas Bond. Approved and Filed August 22, 1902. Wm. P. Freeman, Clerk.

UNITED STATES OF AMERICA, *Indian Territory:*

In the Court of Appeals, *ss:*

The President of the United States of America to J. W. McLoud, trustee, and Francis I. Gowen, receiver, agents and attorneys, and all others, Greeting:

Whereas, In a case lately pending in the United States Court for the Central District of the Indian Territory, wherein W. H. Ansley was plaintiff, and J. W. McLoud and Francis I. Gowen were defendants, judgment was rendered against said plaintiff, from which he has obtained an appeal in the Court of Appeals, and has filed a supersedeas bond, approved by the clerk of said Court of Appeals. You and each of you, and all others are, therefore, hereby commanded that you cease and refrain from all proceedings under and in execution of said judgment, until said appeal is heard and determined in our Court of Appeals, or the further order of our Court of Appeals, or one of the judges thereof.

In Testimony Whereof, I, Wm. P. Freeman, clerk of the said Court of Appeals, hereto set my hand and affix the seal of said court, at my office in the city of South McAlester, this 26th
133 & 134 day of August, 1902.

[SEAL.] WM. P. FREEMAN, *Clerk.*

135 And afterwards, to-wit, on the 12th day of June, A. D. 1903, being one of the days of said June Term, 1903, of said United States Court of Appeals in the Indian Territory, the following proceedings were had and made [or] record in said cause, to-wit:

472.

W. H. ANSLEY, Appellant,
v.
J. W. MCLOUD, Trustee, ET AL., Appellee-.

This cause is this day submitted on briefs and oral argument, the appellee- to file brief within thirty days.

And afterwards, to-wit, on the 19th day of October, A. D. 1904, being one of the days of the September Term, A. D. 1904, of said Court said Court handed down its opinion in said cause which is in the words and figures following, to-wit:

In the United States Court of Appeals for the Indian Territory.

No. 472.

W. H. ANSLEY, Appellant,
vs.
J. W. MCLOUD ET AL., Appellees.

Appeal from the United States Court for the Central District, sitting at South McAlester, I. T., Before W. H. H. Clayton, Judge.

Statement.

On December 13, 1895, plaintiff, appellant here, filed his complaint in equity against the defendants, appellees here, and represents he is a Choctaw Indian by blood, and that defendants are citizens of the United States; that the Choctaw Coal & Railway Company is a corporation, and by act of Congress, approved February 18, 1888, was authorized to do business in the Indian Territory. On the 19th day of September, 1890, on petition of Langhorne Wister, the court appointed receivers for said company, who failed to qualify, and on January 8, 1891, upon petition of said Wister and the Girard Life Insurance, Annuity & Trust Company, of Philadelphia, as Trustee, the court appointed defendant F. I. Gowen and one E. D. Chadick as receivers of said company. On June 14, 1893, Chadick resigned, and J. W. Throckmorton was appointed in his stead; thereafter said Throckmorton died, and defendant Gowen was retained as sole receiver.

That Fritz Sittel was an intermarried Choctaw citizen, and up to about the year 1891, occupied the tract of land upon which South McAlester is situated, as a homestead. In the year 1890 said Sittel and wife platted said town. Upon said plat, the premises, the
136 right of possession to which, and the title to the improvements thereon, which are in controversy in this suit, are

designated and described, as schedules "A, B and C." That said Sittel and wife made a trust deed to one Edwin D. Chadick, as trustee, under which they pretendedly erected, or caused to be erected, buildings and improvements upon the lots in controversy; that the same were erected with money furnished by said Chadick or his associates, and with the intent that they should belong to him and his associates; that they were citizens of the United States, and said trust deed was contrary to the laws of the Choctaw Nation and of the United States, and was made to evade said laws and to enable non-citizens to actually own, possess and control improvements upon land in the Choctaw Nation.

On October 30, 1888, the Principal Chief of the Choctaw Nation approved a law entitled, "Claims and Improvements, Sec. 3, Non-citizen Improvement."

"(1) Be it enacted by the general council of the Choctaw Nation assembled: All non-citizens not in the employ of a citizen of the Choctaw Nation, and non-authorized to live in the Choctaw Nation under the provisions of existing treaty stipulations, who have made or brought improvements in said Nation are hereby notified that they are allowed to sell their so-called improvements to citizens, and if such non-citizens fail to comply with this section, then it shall be the duty of the sheriffs of the counties in which such improvements may be located to advertise the same for sale in thirty days; and sell the same at the appointed time to the highest Choctaw citizen bidder for cash; one half of which shall be paid into their respective treasuries, and the other half into the National Treasury, provided, however, that if any such non-citizens fail or refuse to deliver the possession of such an improvement, he shall be reported by the sheriff of that county to the Principal Chief, and by said chief to the United States Indian Agent, to take proper steps for the removal and prosecution of such offender under section 2118 of the Revised Statutes of the United States. Provided further, that a notice of sale shall be posted by the sheriff in three public places in the county, which shall be legal notice to all persons against whom this law may operate."

That said Railway Company and its receivers caused to be erected said improvements on said lots, and Chadick and his associates conspired with Sittel and wife to build a town in the Choctaw Nation, to be owned by non-citizens of the Choctaw Nation, contrary to the laws of said Nation and of the United States. That Chadick had but one associate, and that was the said Railway Company,
137 and when said company was placed in the hands of receivers, said defendant Gowen associated himself with said Chadick, and said improvements were constructed long after the approval of the aforesaid act of the Choctaw Nation and in defiance thereof; that said defendant McLoud, during all the time, was attorney for said Railway Company and said receivers.

On October 14, 1890, a law was passed and approved by the Choctaw Nation, in part as follows:

"Whereas, certain officials of said Choctaw Coal and Railway Company are said to be engaged in speculating in town sites under illegal leases from Choctaw citizens, and are erecting houses, offices, etc., on

said leased lands, and are renting them. And whereas, said leases of land are in direct violation of law:

SEC. 2. Be it further enacted, that the National Agent is hereby instructed to demand of the officials of the Choctaw Coal and Railway Company that they file, within sixty days, evidence that they are not connected, directly or indirectly, with the town site syndicates; also a copy shall be filed with the Principal Chief. If they fail to file such evidence, the National Agent shall declare their coal leases null and void and so notify them.

SEC. 3. Be it further enacted, That the leases for thirty years are hereby declared to be illegal and null and void.

SEC. 4. Be it further enacted, That the Sheriff of each county is hereby instructed to at once diligently inquire into all such illegal leases and report the same to the Principal Chief, and that he cause any improvement erected by non-citizens, corporate or individual, by virtue of said illegal leases, to be advertised by sale in the manner provided by law.

SEC. 6. Be it further enacted, that a copy of this act be forwarded to the President and Treasurer of said Choctaw Coal and Railway Company by the National Secretary, and that this act shall take effect and be in force from and after its passage.

Approved Nov. 14, 1890.

W. N. JONES,
P. C. C. N."

That a copy of said act was served on said Railway Company, and that thereafter said improvements were erected, with full knowledge that it had no right so to do.

On October 23, 1890, said trust deed was executed by Sittle and wife to said Chadick, as Trustee, for the pretended purpose of securing $45,000.00, to be advanced by Charles Hartshorne and Wm. C. Alderson, of Philadelphia, and their associates

138 On October 4, 1895, in cause No. 969, entitled, Chadick, Trustee, *vs.* Gowen, Throckmorton, *et al.*, Receivers, it was decreed that said Railway Company had advanced for the erection of buildings in South McAlester the sum of $53,220.96; that McLoud was substituted for Chadick, as trustee; that Hartshorne and Alderson had advanced no money and did not know that said deed of trust was executed or said money was advanced until long after said buildings were completed, whereby it was settled that said Railway Company was the sole beneficiary in said deed; that said McLoud seized possession of said improvements as trustee for said Railway Company and claims title to same and right permanently to occupy the land on which the same are situated, and was occupying the same in 1895, prior to the sale of said improvements by the Indian Sheriff as hereinafter stated, contrary to the laws of the Choctaw Nation and of the United States. That said McLoud, as Trustee, defendant, has advertised for sale on December 30, 1895, said property in controversy under said pretended conveyance from Sittel and wife, and under and by virtue of a decree of court of date October 4, 1895. Said notice of sale is false, for the reason that there was no order of

court made on October 4, 1895, directing the sale of said property. That defendants well knew that any rights claimed by them under said deed of trust could not be enforced against plaintiff, and they are trying to do by notice and sale outside of court what they know to be without warrant of law. That said McLoud, as Trustee, has sold property not described in this suit, and unless restrained by injunction will sell the property in controversy to many different persons, and will thus cause many law suits and expense to plaintiff which can be prevented by injunction. That the property thus advertised is of the reasonable value of $60,000.00, and a monthly rental of $300.00.

On September 1, 1893, said Railway Company, through its receivers, brought suit in ejectment against J. T. Miller for possession of property, similarly situated to the property in controversy herein, and in said suit alleged that in 1889 said Railway Company advanced to said Chadick, its manager, and also agent of Sittel, the Indian occupant, certain sums of money to erect buildings on lots therein described, with full knowledge of said Sittel and for his benefit, to the extent they would enhance the value of adjoining lots. Whereby it appears, and plaintiff alleges the same to be true, that said Railway Company advanced said money voluntarily for the purpose of obtaining the occupancy of said land, to evade the laws of the United States and the Choctaw Nation, and same was advanced by said Railway Company, with its full knowledge and consent, and to
139 build a town at South McAlester off its right of way. That the property in controversy is about four hundred feet north of Railway Company's right of way.

The Act of Congress, after designating the amount of land said company could take for its right of way, in Section 10 provides:

"That the said Choctaw Coal and Railway Company shall accept this right of way upon the express condition, binding upon itself, its successors and assigns, that they will neither aid, advise nor assist in any effort looking toward the changing or extinguishment of the present tenure of the Indians in their land, and will not attempt to secure from the Indians any further grant of land, or its occupancy, than is hereinbefore provided. Provided, that any violation of the condition mentioned in this section shall operate as a forfeiture of all the rights and privileges of said railway company under this act."

That the contract alleged and the money advanced was not within the scope of said company's grant by said Act of Congress, and was *ultra vires* and void. That the claim of defendants, as alleged against the property in controversy is against the law and against public policy.

That on or before the 1st day of May, 1895, and since defendant McLoud has claimed possession of the property in controversy and has been renting the same to non citizens, in [voilation] of the laws of the United States and the Choctaw Nation. That on June 24, 1895, the Indian Sheriff, through his deupty, Wm. Ansley, under and by virtue of the laws of the Choctaw Nation, advertised and sold the improvements in controversy on the lands described; that plaintiff became the purchaser of a portion, and by conveyance from other

purchasers became the exclusive owner of said improvements, and became entitled to the occupancy of the lands upon which they were situated. That Sittel and wife long since ceased to assert any claim to said land or improvements, and if they ever claim- to own said improvements long since abandoned their claim. Plaintiff refers to laws of Choctaw Nation appertaining hereto, and asks the court to take judicial notice of, and consider in connection herewith. Said Sittel and wife, by reason of the premises lost, relinquished and forfeited all right to the exclusive possession of said lands and the improvements thereon, and became subject to the control of the authorities of the Choctaw Nation, and were so subject at the time of the sale by the Indian Sheriff, and plaintiff became the purchaser thereof as aforesaid.

140 "The premises considered, plaintiff says that he is entitled to be quieted in the possession of said premises, and in the title to the improvements thereon, for the reason—

1. That he is a *bona fide* purchaser for value as aforesaid.

2. Because said pretended deed from said Fritz and Malvina Sittel to Edwin D. Chadick and associates was executed and delivered by them with the intention to evade the laws of the Choctaw Nation, and was contrary to the laws of the Choctaw Nation, and contrary to the treaties between the Choctaw Nation and the Government of the United States, and should not be upheld.

3. Because neither the said J. W. McLoud, trustee, or Francis I. Gowen, receiver, have any right under the treaties of the United States or the laws of the Choctaw Nation to have and maintain said property in the Choctaw Nation.

4. That the said Choctaw Coal & Railway Company, not being one of the beneficiaries named in said deed of trust, has no contract with said Fritz and Malvina Sittel, conveying to it a lien or other benefit upon or in the property aforesaid, and cannot be substituted in said trust deed in place of the beneficiaries named therein, having no privity thereby with said Sittels.

5. The beneficiaries named in said deed of trust have disavowed any claim thereunder and declared that they advanced nothing thereunder, and never accepted the same, or knew of its execution and delivery, the same is absolutely void.

6. The said Choctaw Coal & Railway Company having been restricted in the act giving it the right to be in the Indian Territory and to the occupancy of the lands therein specified and therein specifically denied upon penalty of forfeiture of all their rights, the right to make any effort to extend its occupancy, the advancement or investment of money by it, or its agents, in the improvement of Indian Lands was not only *ultra vires*, but actually prohibited and consequently void and unenforceable."

Plaintiff prays for temporary injunction against sale and that on final hearing same be made perpetual, and that said deed of trust be cancelled and annulled so far as effects his rights, quieting plaintiff's title to said improvements, and decreeing to plaintiff possession of said property; that all right be decreed out of defendants and vested in plaintiff, and for costs.

On December 4, 1899, defendants filed demurrer and answer and deny each and every allegation stated in said complaint, except as expressly admitted. Defendants admit the allegations of
141 complaint in regard to the decree in the case of Chadick, Trustee, *vs.* Gowen, *et al.*, and allege that prior to the execution of the deed of trust and the erection of the improvements spoken of, Chadick was the Manager of the Railway Company and entered into an agreement, not as Manager of said Company, but personally, with Fritz Sittel and Edward Sittel, by which Chadick was to receive one-third of the profits from the sale and rental of land at South McAlester, the ownership of which was claimed by Fritz Sittel. The same was to be treated as a town site, and said Chadick, without the knowledge of Hartshorne and Alderson, and without the knowledge of said Railway Company, advanced large sums of money belonging to said Company for the erection of the improvements mentioned. That after the erection of said improvements, in the case of Chadick, Trustee, *vs.* The Receivers of said Company, the said Chadick endeavored to enforce in said suit the rights he claimed to have secured under said deed of trust, but the same was decided adversely to him, and in said suit it was judicially ascertained that Chadick and the Sittels entered into the agreement mentioned, and the deed of trust, for their own private gain, and to defraud the beneficiaries in said deed and the Railway Company, whose money was advanced by Chadick without its consent. That by advancing the money as aforesaid, said Railway Company became entitled to an equity in the premises, and was entitled to hold same to collect money to reimburse itself. Defendants ask court to impress said equity upon said premises in favor of said Company and its Trustee, and say that Chadick and Sittel and wife were parties to said suit and bound by its decree; that the money advanced has never been collected. Defendants say that the money advanced by Chadick was not known by them to be for an unlawful purpose, and that there was no intent on the part of said Railway Company to violate any law of the Choctaw Nation or of the United States. Defendants say plaintiff is attempting to practice a fraud upon the jurisdiction of this Court in this suit by asserting a claim which is fraudulent, both in law and in fact. That the sale by the Indian Sheriff was void, because in violation of an order of court prohibiting said sale, on June 24, 1895, notice having been served two days before on said Sheriff that application would be made for order on said day. That said sale was in violation of law, because made for Wm. Ansley, the Deputy Sheriff making the sale, and because no consideration was paid for the deeds executed by the Indian Sheriff. That the sale was made on credit, which was in violation of the Choctaw law. Defendants further say that they are all citizens of the United States, and that under
142 the laws and treaties of the United States, the Choctaw Nation has no jurisdiction over either the person or the property of non-citizens. That the sale was made and forfeiture declared without any notice to these defendants. Defendants say said sales were invalid, and ask that they be annulled and held for naught, and that they recover costs.

On December 14, 1901, plaintiff filed his reply to the allegations of defendants in their answer, and specifically denies each and every allegation therein.

On May 29, 1902, the court, after hearing all the evidence, finds that the plaintiff should take nothing by this suit, and renders the following decree:

"It is, therefore, by the court, considered ordered, adjudged and decreed that the plaintiff herein, W. H. Ansley, take nothing by this suit, and it is further ordered and decreed that the defendant, F. I. Gowen, Rec., have and recover of and from the plaintiff all his costs herein laid out and expended, to all of which plaintiff excepts, and prays an appeal to the U. S. Court of Appeals for the Indian Territory, which is by the court granted."

C. B. STUART,
Attorney for Appellee
REDWINE & JONES,
Attorneys for Appellant.

Opinion.

TOWNSEND, J.:

The appellant has filed the following assignment of error:

"That it is therein adjudged and decreed that plaintiff take nothing by this suit, and that F. I. Gowen, Receiver, recover from plaintiff all his costs herein laid out and expended, the effect of which is to dismiss plaintiff's suit, whereas said decree should have sustained said action and granted the relief sought."

Appellant says the real question in the case is "Was there a forfeiture to the Choctaw Nation of the improvements in question?" It is conceded by the plaintiff that the defendants are citizens of the United States and in possession of the property in controversy. The forfeiture claimed by appellant is by virtue of an Act of the Choctaw Council. The first question that presents itself for our consideration is, under and by virtue of what treaty or Act of Congress did the Choctaw Council obtain authority to pass an act forfeiting the property in possession of non citizens or citizens of the United States. Section 7 of the treaty of 1855 is as follows:

"So far as may be compatible with the Constitution of the United States and the Laws made in pursuance thereof, regulating
143 trade and intercourse with the Indian Tribes, the Choctaws and Chickasaws shall be secured in the unrestricted right of self-government and full jurisdiction over persons and property within their respective limits, excepting, however, all persons with their property who are not by birth, adoption or otherwise citizens or members of either the Choctaw or Chickasaw tribe, and all persons not being citizens or members of either tribe found within their limits shall be considered intruders and be removed from and kept out of the same by the United States Indian Agent, assisted if necessary by the military, with the following exceptions, viz: Such individuals as are now or may be in the employment of the government and their families, those peacefully traveling or sojourning in the country or trading therein under license from the proper authority of the United

States, and such as may be permitted by the Choctaws or Chickasaws with the assent of the United States Indian Agent to reside within their limits without becoming citizens or members of either of said tribes."

This gives the tribes full jurisdiction over persons and property within their respective limits, except all persons who are not, by birth, adoption or otherwise citizens of either tribe. Article 43 of the treaty of 1866 is as follows:

"The United States promise and agree that no white person except officers, agents and employees of the government and of any internal improvement company, or persons traveling through or sojourning in said Nations or either of them, shall be permitted to go into said Territory, unless formally incorporated and naturalized by the joint action of, the authorities of both Nations into one of the said Nations of Choctaws or Chickasaws, according to their laws, customs or usages, but this article is not to be construed to affect parties heretofore adopted, or to prevent the employment temporarily of white persons who are teachers, mechanics, or skilled in agriculture, or to prevent the Legislative authorities of the respective Nations from authorizing such works of internal improvement as they may deem essential to the welfare and prosperity of the community, or to be taken to interfere with or invalidate any action which has heretofore been had in this connection by either of said Nations."

It thus appears that certain classes of non-citizens were allowed to come in the Choctaw Nation, but in no provision of any treaty that our attention has been called to is there any authority given to these tribal governments to enact any legislation that shall affect or control non-citizens or their property. Is not this absolutely
144 essential before any validity can be given to the act of the Choctaw Council? Appellant seems to rely on the decision of Hockett *v.* Alston, 58 S. W. 676. Unfortunately for plaintiff this decision was reversed by the Circuit Court of Appeals in 110 Fed. 912, in which the court says:

"No judgment, order, or execution from any court authorizing the sale of this property by the sheriff of the Cooweescoowee District was pleaded or proved. There was therefore no evidence that this sheriff had any more power than any other stranger to sell and convey the property here in controversy. A sheriff is nothing but the agent of the government to do the acts which the laws authorize him to perform, and his acts, without proof of his lawful authority to perform them, are as ineffective in judicial proceedings as the acts of a private agent without proof of authority from his principal.

* * * * * * *

There was no evidence of any execution, process, order, or judgment of any court which directed him to sell or convey this property. The record is entirely barren of any evidence of any authority on his part to make either the sale or certificate thereof, and that instrument constitutes no evidence of any title or right to the possession of the improvements in controversy. A sheriff's deed, unwarranted by any law or order of a court, is not evidence of any title or right of possession in its grantee in the property which it describes.

Counsel for the plaintiff below devote much time and space to an endeavor to support the contention that the defendants are unlawfully in the possession of these improvements; that they are trespassers and intruders upon this land in violation of the laws of the United States and of the Cherokee Nation. It is unnecessary to the decision of this case to consider or decide whether they are trespassers or not. If they are, there is no evidence here that the plaintiff has any right to disturb them. Under the record before us, she also seeks to intrude upon this property without right, under a Sheriff's certificate of sale issued without warrant of law or order of court. The possession of a trespasser or of an intruder is superior to and must prevail over the claims of all who have no superior legal rights to the title or the possession."

Appellant insists in his brief that the Circuit Court of Appeals sustained in every particular the decision of this court except as to the fact that the Indian statute relied on must be pleaded and proven. On the other hand, the court say: ".... it is unnecessary to the decision of this case to consider or decide whether they are trespassers or not." Without express authority by treaty or some act of Congress, empowering the Choctaw Council to enact any such
145 legislation pertaining to citizens of the United States and their property, we are of the opinion that said act of forfeiture is without validity.

The action against Francis I. Gowen, as receiver, was improperly brought, for the reason he had been discharged as such receiver for months prior to its institution.

After the discharge of a railroad receiver no action can be maintained against him where the property formerly in his custody has been transferred to a purchaser under an order of the court in foreclosure proceedings.

Planters' L. & T. Co., *vs.* Central R. Co., 7 Fed. Rep. 537.
Davis *vs.* Duncan, 19 Fed. Rep. 477.
New York Tel. Co. *vs.* Jewett, 115 N. Y. 166.
Bond *vs.* State, 68 Miss. 648.
Ryan *vs.* Hayes, 62 Tex. 42.
Brown *vs.* Gay, 76 Tex. 444.

Appellant has cited authorities to show that objection to the jurisdiction comes too late, when made in this court. But defendants filed a demurrer at the same time they filed their answer, and under section 5054 Mansfield's Digest, it is provided as follows:

"When a party files a demurrer with his answer or reply, the demurrer must be presented for the consideration of the court at or before the first calling of the cause for trial after the filing of the same. If he fails to do so, the demurrer shall be regarded as waived as to all points, except the jurisdiction of the court and that the pleading demurred to does not state facts sufficient to constitute a cause of action or a defense, counterclaim or set-off."

The relief sought in this action, when considered in the light of the facts established by proof, is, to say the least, most remarkable. The sheriff, who, under the statute, claims the right to declare a forfeiture of the title to property of the value of $60,000.00, and to sell

the same, pretends to advertise and sell, and sells to his own son, who becomes the purchaser for the sum of $270.00, of which amount $1.00 cash is paid, and a note given for the balance of the purchase money, to become due when the son gets possession. In the mean time, the note passes to each successive sheriff, waiting the recovery of a judgment for possession. This is an unconscionable demand, and not one that, in our judgment, commends itself to a court of equity. It is therefore the opinion of this court that the judgment of the court below should be and it is hereby affirmed.

Raymond, C. J., and Gill, J., Concur.

146 Indorsed: Filed in the Office of Clerk of U. S. Court of Appeals, Ind. Ter., Oct. 19, 1904, Wm. P. Freeman, Clerk.

Upon which said opinion said Court on said 19th day of October, A. D., 1904, rendered and caused to be entered of record its judgment in said cause, which is in the words and figures following, to-wit:

W. H. ANSLEY, Appellant,

vs.

J. W. MCLOUD, Trustee, and FRANCIS I. GOWAN, Receiver, Appellee-.

Appeal from United States Court, Central District, Indian Territory.

This cause came on to be heard upon the transcript of the record of the United States Court for the Central District of the Indian Territory, and was argued by counsel, on consideration whereof it is the opinion of the Court that there is no error in the proceedings and judgment of said Court for the Central District, in this cause.

It is therefore considered by the Court that the judgment of said Court for the Central District, in this cause rendered be and the same is hereby in all things affirmed with costs.

It is further considered that said appellees recover of said appellant all their costs in this Court, in this cause expended, and have execution thereof.

And afterwards, to-wit, on the 6th day of December, A. D. 1904, there was filed in the Office of the Clerk of said Court, a Petition for Appeal in said cause, which is in the words and figures following, to-wit:

UNITED STATES OF AMERICA:

In the United States Circuit Court of Appeals in and for the Eighth Judicial Circuit.

W. H. ANSLEY, Appellant,
vs.
J. W. MCLOUD, Trustee, and FRANCIS I. GOWEN, Receiver of the Choctaw Coal and Railway Company, Appellees.

Petition for an Appeal.

To Joseph A. Gill, Judge, for the Northern District of the Indian Territory, and Associate Justice of the U. S. Court of Appeals for the Indian Territory:

Comes your petitioner W. H. Ansley, Appellant herein, and says that he is a resident of the Central District of the Indian
147 Territory, and a citizen by blood of the Choctaw Tribe of Indians, and said appellees, to-wit: J. W. McLoud, as Trustee; and Francis I. Gowen, Receiver of the Choctaw Coal & Railway Company, are non-residents of the Indian Territory, said J. W. McLoud resides at Fort Smith, Arkansas; and Francis I. Gowen, at Philadelphia, Pennsylvania.

Said W. H. Ansley, appellant in the aforesaid action, respectfully shows that at the September Term, 1904, of the United States Court of Appeals in the Indian Territory there was a case then and there pending wherein said W. H. Ansley was appellant, and J. W. McLoud, Trustee; and Francis I. Gowen, Receiver of the Choctaw Coal & Railway Company, appellees; in which a judgment was then and there rendered in favor of said appellees and against said appellant; that said judgment rendered at said September term, 1904, of the said United States Court of Appeals in said Indian Territory, affirmed a judgment of the United States Court in the Central District of the Indian Territory at South McAlester, Indian Territory; that the amount involved in said suit is more than Two Thousand ($2,000.) dollars, exclusive of costs and interest, and your petitioner feeling much aggrieved at the action of the said United States Court of Appeals in and for the Indian Territory, in affirming said judgment aforesaid, respectfully prays an Appeal from the United States Court of Appeals for the Indian Territory to the United States Circuit Court of Appeals for the Eighth Circuit, in order that the errors complained of in this asignment of errors as herein filed, may be reviewed; and if error be found, corrected according to law and the custom of said United States of America in such cases; and that all necessary process issue directing that the record in said cause be certified to said United States Circuit Court of Appeals for the eighth Circuit, and a citation issue as provided in such cases.

W. H. ANSLEY,
Petitioner.
W. N. REDWINE,
W. H. JONES,
Att'ys for Petitioner.

The above and foregoing petition and appeal is hereby allowed.

JOSEPH A. GILL,
Judge of the United States Court in and for the Northern District of the Indian Territory, and Associate Justice of the United States Court of Appeals for the Indian Territory.

148 Indorsed: No. 472. W. H. Ansley, Appellant, *vs.* J. W. McLoud *et al.*, Appellees. Petition for Appeal. Filed in the Office of Clerk of U. S. Court of Appeals, Ind. Ter., Dec. 6, 1904. Wm. P. Freeman, Clerk.

And on said 6th day of December, A. D. 1904, there was also filed an Asignm-nt of Errors in said cause which is in the words and figures following, to-wit:

UNITED STATES OF AMERICA:

In the United States Circuit Court of Appeals in and for the Eight Judicial Circuit.

W. H. ANSLEY, Appellant,
vs.
J. W. MCLOUD, Trustee, and FRANCIS I. GOWEN, Receiver of the Choctaw Coal and Railway Company, Appellees.

Assignment of Errors.

Comes W. H. Ansley, the appellant, and says that in the records, actions, judgments and judicial proceedings in the cause known and styled "W. H. Ansley, plaintiff, *vs.* J. W. McLoud, Trustee; and Francis I. Gowen, Receiver of the Choctaw Coal & Railway Company, defendants," in the U. S. Court for the Central District of the Indian Territory; as well as in the actions, rulings, records, judicial proceedings and opinions in the U. S. Court of Appeals in the Indian Territory, in the cause known and styled in that court as "W. H. Ansley, appellant, *vs.* J. W. McLoud, Trustee, *et al.*, appellees," which was and is the same identical cause as the cause aforesaid, first brought in the U. S. Court for the Central District of the Indian Territory aforesaid, there is manifest error in the actions, records, judgments and judicial proceedings in said United States Court for the Central District of the Indian Territory, and also in the actions, rulings, judgments, judicial proceedings and opinions of the U. S. Court of Appeals in the Indian Territory, in this, to-wit:

First: That said U. S. Court for the Central District of the Indian Territory erred as follows: There is error in the decree of the U. S. Court in this, that it is therein adjudged and decreed that plaintiff take nothing by this suit, and that Francis I. Gowen, receiver, recover from plaintiff all his costs herein laid out and expended, the effect of which is to dismiss plaintiff's suit, whereas said decree should have sustained said action and rendered the relief sought, which decree and judgment was excepted to by the appellant.

Second: The court erred in excluding from the deposition of William Ansley, a witness on behalf of the plaintiff, the following, to-wit: "and the Chief ratified my action as to the sale and
149 payments of said property, and instructed me to proceed at once and employ attorneys to assist me in getting possession of the property for the purchasers; and I at once employed attorneys to assist the plaintiff, W. H. Ansley, in obtaining possession of the property sold by me as Sheriff. Moseley & Smith, attorneys of Denison, Texas, a firm of lawyers; and Cole & Redwine, attorneys at South McAlester, were employed by the Chief of the Choctaw Nation to assist plaintiff in obtaining possession of said property. In October 1895 the Choctaw Council passed a special act, appropriating Fifteen Hundred ($1500.) dollars to employ attorneys to represent the Choctaw Nation and to assist the plaintiff in obtaining possession of the property aforesaid. In the December following contracts employing the aforesaid lawyers were signed by Jeff Gardner, Chief of the Choctaw Nation and my action as Deputy Sheriff aforesaid, as to the sale and payments of the purchase price of the aforesaid property, was ratified and accepted by the Choctaw Nation" to which ruling of the court in excluding said evidence plaintiff then and there duly excepted.

Third: The court erred in overruling and disallowing plaintiff's objection to the introduction in evidence of the report of Yancey Lewis special Master Commissioner in the cause of Langhorne Wister *et al. vs.* the Choctaw Coal & Railway Company, of July 17th, 1894, and in admitting said report in evidence—to which the appellant excepted;

Fourth: The court erred in over-ruling and disallowing the plaintiff's objection to the introduction in evidence of a final order or decree discharging the receiver in the cause of Langhorn Wister *et al. vs.* the Choctaw Coal & Railway Company, which was entered on the 2nd day of March, 1895, in the U. S. Court for the Central District of the Indian Territory, at South McAlester, and in admitting said order in evidence, to which action of the court the appellant excepted at the time;

Fifth: The court erred in over-ruling and disallowing plaintiff's objection to the introduction in evidence of a decree in the cause of Langhorn Wister *et al. vs.* The Choctaw Coal & Railway Company, which was entered on the 17th day of July, 1894, in the U. S. Court for the Central District of the Indian Territory, at South McAlester, and in admitting said order or decree in evidence, to which ruling of the court the appellant then and there excepted;

Sixth: The court erred in over-ruling and disallowing plaintiff's objection to the introduction in evidence of the supplemental report of Yancy Lewis, special master commissioner in the cause of
150 Langhorn Wister, *et al. vs.* The Choctaw Coal & Railway Company, the said report being made to the U. S. Court for the Central District of the Indian Territory, and in admitting said report in evidence; to the ruling of said court in admitting said report in evidence the appellant then and there excepted;

Seventh: The court erred in over-ruling and disallowing plaintiff's objection to the introduction in evidence of the final decree in

the cause of Langhorn Wister *et al. vs.* The Choctaw Coal & Railway Company, which was entered on the 13th day of October, 1894, in the U. S. Court for the Central District of the Indian Territory, at South McAlester, and in admitting said final decree in evidence, to which ruling of the court the appellant then and there excepted;

Eighth: The court erred in over-ruling and disallowing plaintiff's objection to the introduction in evidence of the report of Yancy Lewis, Master in Chancery, in the cause of Edwin Chadick, Trustee, *vs.* Receiver of the Choctaw Coal & Railway Company, in the United States Court for the Central District of the Indian Territory, and in admitting said report in evidence, over the objection of said appellant, to which he then and there excepted;

Ninth: The court erred in ordering and decreeing that the plaintiff, W. H. Ansley, take nothing by this suit, and ordering and decreeing that the defendant, Francis I. Gowen, receiver, have and recover of and from the plaintiff all his costs, laid out and expended; to which ruling of the court appellant then and there excepted:

Tenth: The court erred in dismissing plaintiff's suit and refusing to grant the relief sought, and in taxing the plaintiff with the costs in this cause:

Eleventh: That the said United States Court of Appeals in the Indian Territory erred:

I. In not reversing the judgment of the U. S. Court for the Central District of the Indian Territory, because of each several errors of the latter court as to its actions, rulings, judgments and judicial proceedings, and in not rendering judgment in favor of said appellant according to the prayer of his complaint;

II. The U. S. Court of Appeals in the Indian Territory erred in holding that Section 7 of the treaty of 1855 between the United States Government and the Choctaw and Chickasaw Tribe- of Indians did not give said Choctaw Tribe of Indians authority to pass laws declaring forfeitures of property built on the public domain
151 of the Choctaw Nation in violation of said treaty and the United States Laws, which section reads as follows, to-wit:

"So far as may be compatible with the constitution of the United States and the laws made in pursuance thereof, regulating trading and intercourse with the Indian Tribes, the Choctaws and Chickasaws shall be secured in the unrestricted right of self-government and full jurisdiction over persons and property, within their respective limits; excepting, however, all persons with their property, who are not by birth, adoption or otherwise, citizens or members of either the Choctaw or Chickasaw tribe; and all persons not being citizens or members of either tribe, found within their limits, shall be considered intruders, and be removed from, and kept out of the same, by the United States agent, assisted if necessary by the military, with the following exceptions, viz: Such individuals as are now or may be in the employment of the government and their families those peacefully travelling, or temporarily sojourning in the country, or trading therein, under license from the proper authority of the United States; and such as may be permitted by the Choctaws or Chickasaws, with the assent of the United States agent, to reside within their

limits, without becoming citizens or members of either of said tribes."

III. The United States Court of Appeals in the Indian Territory erred in holding, that article 43 of the treaty of 1866, between the United States Government and the Choctaw & Chickasaw Tribe of Indians, did not give said Tribe of Indians authority to enact and pass laws regulating the forfeiture of non-citizens of improvements built on the public domain of the Choctaw and Chickasaw Nation in violation of section 7 of the Treaty of 1855 between the United States Government and the Choctaw and Chickasaw Tribe of Indians, and in violation of Article 43 aforesaid of the Treaty of 1866 between the Choctaw and Chickasaw Tribe of Indians and the United States Government, and in violation of the acts of congress. Article 43 of the Treaty of 1866 aforesaid, reads as follows:

"The United States promises and agrees that no white person except officers, agents and employees of the government and of any internal improvement company, or persons travelling through, or temporarily sojourning in, the said nations, or either of them, shall be permitted to go into said territory, unless formally incorporated and naturalized by the joint action of the authorities of both nations into one of the said Nations of Choctaws and Chickasaws,
152 according to their laws, customs, or usages; but this article is not to be construed to affect parties heretofore adopted, or to prevent the employment temporarily of white persons who are teachers, mechanics, or skilled in agriculture, or to prevent the legislative authorities of the respective nations from authorizing such works of internal improvement as they may [deed] essential to the welfare and prosperity of the community, or be taken to interfere with or invalidate any action which has heretofore been had in this connection by either of the said nations."

IV. The U. S. Court of Appeals in the Indian Territory erred in holding that there was no provision in any treaty made by and between the Choctaw & Chickasaw Tribe of Indians and the United States Government, wherein said Choctaw and Chickasaw Tribe of Indians had the authority to enact any legislation that shall affect or control non-citizens' improvements built upon the public domain of the Choctaw Nation in violation of the acts of congress and the treaties between the United States Government and the Choctaw and Chickasaw Tribe of Indians;

V. The U. S. Court of Appeals in the Indian Territory erred in holding that the act of the Choctaw Council, known as "Claims and Improvements," did not give the Choctaw Nation and its sheriffs thereof, the right to advertise and sell improvements built upon the public domain of the Choctaw Nation by non-citizens thereof in violation of the treaties between the U. S. Government and the Choctaw and Chickasaw tribe of Indians, and the various acts of congress. Section 3 of said Act, known as "Claims and Improvements," under which the property in question was sold, reads as follows:

"SECTION 3, Article I. Be it Enacted by the General Council of the Choctaw Nation Assembled; All non-citizens not in the employ of a citizen of the Choctaw Nation, and not authorized to live in the Choctaw Nation, under the provisions of existing treaty stipulations,

who have made or brought improvements in said Nation are hereby notified that they are allowed to sell their so-called improvements to citizens, and if such non-citizens fail to comply with this section, then it shall be the duty of the sheriffs of the counties in which such improvements may be located to advertise the same for sale in thirty days, and sell the same at the appointed time to the highest Choctaw citizen bidder for cash, one-half of which shall be paid into their respective treasuries, and the other half into the National Treasury, provided, however, that if any such non-citizen shall fail or
153 refuse to deliver possession of such an improvement, he shall be reported by the sheriff of that county to the Principal Chief and by said Chief to the U. S. Indian Agent, to take proper steps for the removal and prosecution of such offender, under section 2118 of the revised statutes of the United States; provided, further, that a notice of sale shall be posted by the sheriff in three public places in the county, which shall be legal notice to persons against whom this law operates."

VI. The U. S. Court of Appeals in the Indian Territory erred in holding that the act of the Choctaw Council, known as "Claims and Improvements," was unconstitutional and null and void.

VII. The U. S. Court of Appeals in the Indian Territory erred in holding that the property in controversy was not forfeited to the Choctaw Nation when the same was built upon the public domain of the Choctaw Nation and off of the right of way of the Choctaw Coal and Railway Company, and in violation of the treaties between the United States government and the Choctaw and Chickasaw tribe of Indians, and in violation of the various acts of congress, and more especially in violation of section 10 of the act of congress, granting the Choctaw Coal & Railway Company a right of way through the Choctaw Nation, which section 10 reads as follows:

"That the said Choctaw Coal & Railway Company shall accept this right of way upon the express condition, binding upon itself, its successors and assigns, that they will neither do, advise or assist in any efforts looking toward the change or extinguishment of the present tenure of the Indians in their lands, and will not attempt to secure from the Indians any further grant of land, or its occupancy, than is hereinbefore provided; provided, that any violation of the conditions mentioned in this section shall operate as a forfeiture of all the rights and privileges of said Railway Company under this act."

VIII. The U. S. Court of Appeals in the Indian Territory erred in holding that the action against Francis I. Gowen, as receiver of the Choctaw Coal & Railway Company was improperly brought, and in not holding that he was a proper party in this action;

IX. The U. S. Court of Appeals in the Indian Territory erred in holding that the objections raised by appellees in the Court of Appeals in the Indian Territory for the first time, that Francis I. Gowen, receiver, was an improper party to said action, did not come too late—the objection not being raised in the *S. U.* Court for the Central District of the Indian Territory;

154 X. The U. S. Court of Appeals erred in affirming the judgment of the U. S. Court for the Central District of the Indian Territory, and in not reversing the judgment of the U. S. Court for the Central District of the Indian Territory, and in not entering a judgment for the appellant and granting the relief prayed for in his pleadings;

Wherefore, and for divers other reasons and causes apparent on the face of the record in the U. S. Court for the Central District of the Indian Territory, and in the U. S. Court of Appeals in the Indian Territory, appellant now prays that said action, ruling, orders, judgments and judicial proceedings heretofore had, as aforesaid, in the U. S. Court for the Central District of the Indian Territory, as well as the judgment, orders and proceedings of the U. S. Court of Appeals in the Indian Territory, may be reversed and forever as naught held and esteemed, and that judgment here in this Court (the Honorable U. S. Circuit Court of Appeals) may be entered in favor of appellant, and the relief granted as prayed for in his pleadings.

W. H. ANSLEY, *Appellant.*
W. N. REDWINE,
W. H. JONES,
Attorneys for Appellant.

Indorsed: No. 472, W. H. Ansley, Appellant, *vs.* J. W. McLoud, *et al.*, Appellees. Assignment of Errors. Filed in the Office of Clerk of U. S. Court of Appeals, Ind. Ter., Dec. 6, 1904. Wm. P. Freeman, Clerk.

And on said 6th day of December, A. D. 1904 there was also filed an Appeal Bond in said cause which is in the words and figures following, to-wit:

Know All Men By These Presents:

That, we, W. H. Ansley, as principal, and A. F. Davidson, W. A. Walker, as sureties; are held and firmly bound unto J. W. McLoud, Trustee, and Francis I. Gowen, Receiver of the Choctaw Coal & Railway Company, in the full and just sum of Five Hundred ($500.00) dollars, to be paid to the said J. W. McLoud, Trustee, and Francis I. Gowen, Receiver of the Choctaw Coal & Railway Company, or their heirs, executors, administrators or assigns, to which payment well and truly — be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

Sealed With Our Seal and dated this the 30th day of November, in the year of Our Lord One Thousand Nine Hundred and Four.

155 Whereas, lately at the September Term, A. D. 1904, of the United States Court of Appeals, in the Indian Territory, in a suit depending in said court between W. H. Ansley, Appellant; and J. W. McLoud, Trustee; and Francis I. Gowen, Receiver, of the Choctaw Coal & Railway Company, Appellees; judgment was ren-

dered against the said W. H. Ansley, Appellant; for the cost of the aforesaid action, and the said W. H. Ansley has obtained an appeal from said United States Court of Appeals in the Indian Territory to the United States Circuit Court of Appeals in the Eighth Circuit, to reverse the judgment in the aforesaid suit and have the errors corrected, and a judgment entered in favor of appellant, and a citation directed to the said J. W. McLoud Trustee; and Francis I. Gowen, Receiver admonishing them to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the date of said Citation.

Now, the condition of the above obligation is such, that if the said W. H. Ansley shall prosecute his appeal to an effect and answer all damages and costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

W. H. ANSLEY.
A. F. DAVIDSON.
W. A. WALKER.

Qualification of Surety.

INDIAN TERRITORY, *Central District:*

I, A. F. Davidson who after being duly sworn deposes and says that he is surety on the within Bond, and that he is a resident of the Central District of the Indian Territory, and has personal property located within said Central District of said Indian Territory over and above his debts, liabilities and exemptions, to the amount of the sum of $1,000.00.

A. F. DAVIDSON.

Subscribed and sworn to before me this the 1st day of December, 1904.

[SEAL.] S. F. BROWN,
Notary Public.

156 *Qualification of Surety.*

INDIAN TERRITORY, *Central District:*

I W. A. Walker who after being duly sworn deposes and says, that he surety on the within Bond, and that he is a resident of the Central District of the Indian Territory, and has personal property located within said Central District of the Indian Territory, over and above his debts, liabilities, and exemptions, to the amount of the sum of $1000.00.

W. A. WALKER.

Subscribed and sworn to before me this the 1st day of December, 1904.

[SEAL.] S. F. BROWN,
Notary Public.

Indorsed: No. 472. Bond. W. H. Ansley, Appellant, *vs.* J. W. McLoud, *et al.*, Appellees. Within bond approved this 3" day of December, 1904. Joseph A. Gill, Associate Justice United States Court of Appeals, Ind. Ter. Filed in the Office of Clerk of U. S. Court of Appeals, Ind. Ter., Dec. 6, 1904, Wm. P. Freeman, Clerk.

UNITED STATES OF AMERICA, *Indian Territory.*

In the Court of Appeals, *ss.*

I, William P. Freeman, Clerk of the United States Court of Appeals in the Indian Territory, do hereby certify that the foregoing is a full, true and complete transcript of the record and proceedings, together with all things concerning the same, of the said Court, in the cause therein named, as fully as the same remains of record and on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at office in the City of South McAlester, Indian Territory, this 13th day of November, A. D. 1904.

[Seal United States Court of Appeals in the Indian Territory.]

WM. P. FREEMAN,
Clerk United States Court of Appeals in the Indian Territory.

Filed Dec. 26, 1904.

JOHN D. JORDAN, *Clerk.*

157 (*Appearance of Counsel for Appellant.*)

On the twenty-sixth day of December, A. D. 1904, an appearance of counsel for the appellants was filed in the Clerk's office of said Circuit Court of Appeals in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2178.

W. H. ANSLEY, Appellant,
vs.
J. W. MCLOUD, Trustee, ET AL.

The Clerk will enter *my* appearance as Counsel for the Appellant.

W. N. REDWINE.
W. H. JONES.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2178. W. H. Ansley, Appellant, *vs.* J. W. McLoud, Trustee, *et al.* Appearance. Filed Dec. 26, 1904, John D. Jordan, Clerk. W. N. Redwine, W. H. Jones, Counsel for Appellant.

(*Appearance of Counsel for Appellees.*)

And on the twenty-ninth day of March, A. D. 1905, an appearance of counsel for the appellees was filed in the Clerk's office of said Circuit Court of Appeals in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2178.

W. H. ANSLEY, Appellant,
vs.
J. W. MCLOUD, Trustee, ET AL.

The Clerk will enter my appearance as Counsel for the Appellees.
C. B. STUART.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2178. W. H. Ansley, Appellant, *vs.* J. W. McLeod, Trustee, *et al.* Appearance. Filed Mar. 29, 1905, John D. Jordan, Clerk. C. B. Stuart, Counsel for Appellees.

158 (*Motion for Order of Revivor.*)

And on the eighth day of May, A. D. 1905, a motion for an order of revivor was filed in the Clerk's office of said Circuit Court of Appeals in said cause, in the words and figures following, to-wit:

In the United States Court of Appeals, Eighth Circuit.

No. 2178.

W. H. ANSLEY, Appellant,
vs.
J. W. MCCLOUD, Trustee, and FRANCIS I. GOWEN, Receiver of the Choctaw Coal and Railway Company, Appellees.

Motion to Revive.

Comes W. A. Walker, Executor of the Estate of W. H. Ansley, deceased, and avers, that said W. H. Ansley, the appellant in the above named action departed this life on or about the 13th day of April 1905, after having made a Will, in which said W. A. Walker was named as the Executor of the estate of said W. H. Ansley aforesaid.

That on the 22nd day of April, 1905, the aforesaid Will was probated, in the probate Court, of the United States Court at South McAlester Indian Territory, and letters Testamentary duly issued

to said W. A. Walker, as Executor aforesaid, a Certified copy of which is hereto attached and marked exhibit "A" and made a part of this motion.

Wherefore, W. A. Walker, Executor as aforesaid of said Estate of W. H. Ansley deceased, moves the Honorable United States Court for the Eighth Judicial Circuit, to revive said action of W. H. Ansley, *vs.* J. W. McCloud as Trustee, *et al.*, in the name of said W. A. Walker, Executor, as Appellant in said action, and that said cause be submitted on brief of Appellant heretofore filed in said Court, and that hearing be had thereon as per setting heretofore made.

W. A. WALKER,
Executor Estate of W. H. Ansley, Dece's'd.

159 Subscribed and sworn to before me on this the 29 day of April 1905.

[SEAL.] JOS. J. RANTON,
Notary Public, Central District Ind. Ter.

My Com. expires Dec. 5, 1908.

W. N. REDWINE,
W. H. JONES,
Attorneys for Appellant.

I hereby accept service of the within motion.

C. B. STUART,
Att'y — Appellees.

Ex. "A."

Letters Testamentary.

UNITED STATES OF AMERICA,
Indian Territory, Central District, So. McAlester Division, ss:

The President of the United States of America to all Persons to whom these Presents shall come, Greeting:

Know Ye, That the last Will and Testament of William Henry Ansley deceased, hath in due form of the law been exhibited, proved, and recorded in the office of the Clerk of the Court of Probate for the So. McAlester Division, a copy of which is hereunto annexed, and inasmuch as it appears that W. A. Walker has been appointed Executor in and by the said last Will and Testament to execute the same, and to the end that the property of the Testator may be preserved for those who shall appear to have a legal right or interest therein; and that the said last Will may be executed according to the request of the Testator, we do hereby authorize him the said W. A. Walker as such executor to collect and secure, all and singular, the goods and chattels, rights and credits, which were of the said William Henry Ansley at the time of his death, in whosoever hands

or possession the same is found, and to perform and fulfill
160 all such duties as may be enjoined upon him by said Will as far as there shall be property and the law charge him; and in general to do and perform all other acts which now or hereafter may be required of him by law.

Witness, The Honorable Wm. H. H. Clayton Judge of the United States Court in the Indian Territory, and the seal thereof, at So. McAlester in the Indian Territory, this 22nd day of April A. D. 1905.

E. J. FANNIN, *Clerk,*
By J. B. ROSE, *Deputy.*

UNITED STATES OF AMERICA,
Central District, Indian Territory:

I, E. J. Fannin, Clerk of the United — Court in and for the Central District of the Indian Territory, do hereby certify that the foregoing is a true and correct copy of the Letters Testamentary issued to W. A. Walker, Executor of the estate of William Henry Ansley, deceased, as the same appear of record in my office.

In witness Whereof, I have hereunto set my hand and seal of said office, at South McAlester, this the 29th day of April, 1905.

[SEAL.] E. J. FANNIN, *Clerk,*
By W. C. DONNELLY, *D. C.*

(Endorsed:) 419. United States Court, in the Indian Territory. Central District So. McAlester Division. Estate of Wm. Henry Ansley Deceased. Letters Testamentary to W. A. Walker.

(Endorsed:) No. 2178. W. H. Ansley, Appellant, *vs.* J. W. McLoud, Trustee, *et al.* Motion to revive action in the name of W. A. Walker, Executor of the Estate of W. H. Ansley, deceased. Filed May 8, 1905. John D. Jordan, Clerk.

(*Order of Revivor.*)

And on the sixteenth day of May, A. D. 1905, in the record of the proceedings of said Circuit Court of Appeals is an order
161 of revivor in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1905.

TUESDAY, *May* 16, 1905.

No. 2178.

W. H. ANSLEY, Appellant,
vs.
J. W. MCLOUD, Trustee, ET AL.

Appeal from the United States Court of Appeals in the Indian Territory.

This cause came on to be heard upon the suggestion of the death of the appellant and motion for an order of revivor filed by counsel for the appellant.

On Consideration Whereof, and in pursuance of said motion, it is now here ordered, adjudged and decreed by this Court, that this cause, be, and the same is hereby, revived in the name of W. A. Walker, Executor of the estate of W. H. Ansley, deceased, with the same force and effect as if the same had not abated by the death of said W. H. Ansley.

(*Order of Submission.*)

And on the sixteenth day of May, A. D. 1905, in the record of the proceedings of said Circuit Court of Appeals is an order of submission in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1905.

TUESDAY, *May* 16, 1905.

No. 2178.

W. A. WALKER, Executor of the Estate of W. H. Ansley, deceased, Appellant,
vs.
J. W. MCLOUD, Trustee, ET AL.

Appeal from the United States Court of Appeals in the Indian Territory.

This cause having been called for hearing in its regular order, and counsel not appearing to argue orally, this cause was thereupon, taken by the Court as submitted on the transcript of record from said United States Court of Appeals and the briefs of counsel filed herein.

162 (*Opinion.*)

And on the twenty-third day of May, A. D. 1905, an opinion of said Circuit Court of Appeals was filed in said cause, in the words and figures following, to-wit:

163 United States Circuit Court of Appeals, Eighth Circuit, May Term, A. D. 1905.

No. 2178.

W. A. WALKER, Executor of the Estate of W. H. Ansley, Deceased, Appellant,

vs.

J. W. McLOUD, Trustee, and FRANCIS I. GOWEN, Receiver of the Choctaw Coal and Railway Company, Appellees.

Appeal from the United States Court of Appeals in the Indian Territory.

Mr. W. N. Redwine, Mr. Preslie B. Cole and Mr. W. H. Jones filed brief for the appellant.
Mr. C. B. Stuart filed brief for the appellees.

Before Van Devanter and Hook, Circuit Judges, and Adams, District Judge.

Per Curiam:

This appeal challenges a decree of the United States Court for the Central District of the Indian Territory dismissing upon the merits the complaint in equity of the appellant's testator whereby the latter, as plaintiff, sought to be quieted in the possession of certain lots in the Town of South McAlester in the Choctaw Nation, and in the title to the improvements thereon, and to enjoin a sale under a trust deed. The decree was affirmed by the Appellate Court in the Indian Territory, 82 S. W. 908. The plaintiff's claim rests upon a sale made by the sheriff of Tobucksey county, Choctaw Nation, April 24, 1894, under an act of the Choctaw legislature approved October 30, 1888, which reads as follows:

164 "All non citizens not in the employ of a citizen of the Choctaw Nation and not authorized to live in the Choctaw Nation under the provisions of existing treaty stipulations who have made or bought improvements in said Nation, are hereby notified that they are allowed to sell their so-called improvements to citizens, and if such non citizens fail to comply with this section, then it shall be the duty of the sheriffs of the counties in which such improvements may be located to advertise the same for sale in thirty days: and sell the same at the appointed time to the highest Choctaw citizen bidder for cash; one half of which shall be paid into their respective treasuries, and the other half into the national treasury. Provided, however, That if any such non citi-

zen fail or refuse to deliver the possession of such an improvement he shall be reported by the sheriff of that county to the principal chief and by said chief to the United States Indian Agent, to take proper steps for the removal and prosecution of such offender under Section 2118 of the revised statutes of the United States. Provided, further, That a notice of sale shall be posted by the sheriff in three public places in his county, which shall be legal notice to all persons against whom this law may operate."

At the sale the plaintiff and two other Choctaw citizens purchased the improvements upon a bid somewhat in excess of $270.00, for which the sheriff accepted their promissory notes payable to himself and his successor in office, when the purchasers should be put in possession by the Choctaw Nation, or should obtain possession otherwise. Possession was not obtained by the purchasers and the notes have not been paid. The interest of the other two purchasers was conveyed to the plaintiff. The reasonable value of the improvements at the time of the sale was $60,000.00, and their reasonable rental value was $300.00 per month. The defendants and those whom they represent, as is claimed, were at and before the time of the sale non-citizens of the Choctaw Nation, not in the employ of a citizen of the Nation and not authorized to live in the Nation, and yet at that time they were, and ever since then they have continued to be, in the possession of the improvements under a claim of right thereto.

Several objections are made to the plaintiff's title or right of recovery. But one of them will be considered. The act of the Choctaw legislature, under which the plaintiff claims, did not purport to transfer the title or right to improvements made or bought by a non-citizen, except upon a sale by the sheriff "to the highest Choctaw citizen bidder for cash." An officer making a sale under such a statute must yield obedience to its directions. He cannot sell upon credit or accept any other than an unconditional cash bid. So, also, a purchaser whose bid is made and accepted in disregard of the directions of the statute, or who does not pay the purchase price, acquires no interest in or right to the property. Hooper *v.* Castetter, 45 Neb. 67, 76; Phelps *v.* Jackson, 31 Ark. 272, 278; People *ex rel. v.* Hays, 5 Cal. 66; Negley *v.* Stewart, 10 S. & R. 207; Robins *v.* Bellas, 2 Watts 359; Wheatley *v.* Tutt, 4 Kans. 195; Swope *v.* Andery, 5 Ind. 313; Reynolds *v.* Wilson, 15
165 Ill. 394. The sale under which the plaintiff claims was so obviously and so grossly in violation of the directions of the statute that it was and is of no effect.

It is not necessary to consider whether the defendants are intruders in the Choctaw Nation and are holding these improvements in violation of its law, because if they are, the plaintiff has no right to disturb them. Hockett *v.* Alston, 49 C. C. A. 180, 110 Fed. 910. The duty of enforcing the Choctaw laws in this respect, and of removing intruders from the Choctaw Nation, is by law confided to others. Morris *v.* Hitchcock, 194 U. S. 384; Buster *v.* Wright — C. C. A. —, 135 Fed. 947.

The decree is affirmed.

Filed May 23, 1905.

166 (*Decree.*)

And on the twenty-third day of May, A. D. 1905, in the record of the proceedings of said Circuit Court of Appeals is a decree in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1905.

TUESDAY, *May* 23, 1905.

No. 2178.

W. A. WALKER, Executor of the Estate of W. H. Ansley, Deceased, Appellant,
vs.
J. W. MCLOUD, Trustee, and FRANCIS I. GOWEN, Receiver of the Choctaw Coal and Railway Company.

Appeal from the United States Court of Appeals in the Indian Territory.

This cause came on to be heard on the transcript of the record from the United States Court of Appeals in the Indian Territory, and was argued by counsel.

On Consideration Whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said United States Court of Appeals, and the decree of the United States Court for the Central Distict of the Indian Territory, in this cause, be, and the same are each hereby, affirmed with costs; and that J. W. McLoud, Trustee, and Francis I. Gowen, Receiver of the Choctaw Coal and Railway Company have and recover against W. A. Walker, Executor of the Estate of W. H. Ansley, deceased, the sum of twenty dollars for their costs herein.

It is further ordered that this cause be, and the same is hereby, remanded to the United States Court for the Central District of the Indian Territory, with directions for proceedings therein according to law and justice.

MAY 23, 1905.

(*Petition for and Order Allowing Appeal.*)

And on the fourth day of October, A. D. 1905, a petition for appeal was filed in the Clerk's office of said Circuit Court of Appeals in said cause, in the words and figures following, to-wit:

167 UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

W. A. WALKER, Executor of the Estate of W. H. Ansley, Deceased, Appellant,

vs.

J. W. MCLOUD, Trustee, and FRANCIS I. GOWEN, Receiver of the Choctaw Coal and Railway Company, Appellees.

Petition for an Appeal.

To Honorable Willis Van Devanter, United States Circuit Judge, and Justice for the United States Circuit Court of Appeals for the Eighth Circuit:

Comes your petitioner, W. A. Walker, executor of the estate of W. H. Ansley, deceased, appellant, in the aforesaid action and respectfully shows that at the May Term A. D. 1905 of the United States Circuit Court of Appeals for the Eighth Circuit held at St. Paul, Minnesota, there was a case then and there pending wherein said W. A. Walker, executor of the estate of W. H. Ansley, deceased appellant and J. W. McLoud, trustee and Francis I. Gowen, Receiver of the Choctaw Coal and Railway Company, appellees, in which a judgment was then and there rendered in favor of said appellees and against said appellant; that said judgment rendered at said May term A. D. 1905 of said United States Circuit Court of Appeals for the Eighth Circuit affirmed the judgment of the United States Court of Appeals of the Indian Territory and the United States Court for the Central District of the Indian Territory at South McAlester; that the amount involved in said action is more than $5000.00 exclusive of costs and interest, and your petitioner feeling much aggrieved by the decree made and entered on May the 23rd, A. D. 1905 in the above entitled cause by said United States Circuit Court of Appeals for the Eighth Circuit in affirming the judgments aforesaid, does hereby appeal from said order and decree to the Supreme Court of the United States at Washington, D. C. for the reasons specified in the assign-
168 ment of errors which is herewith filed, and appellant prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order was made duly authenticated may be sent to the Supreme Court of the United States at Washington, D. C. in order that the errors complained of in this assignment of errors as herein filed, may be reviewed and if error be found, corrected according to law and the custom of said United States of America in such cases, and that citation issue as provided in such cases.

W. A. WALKER,
Executor of the Estate of W. H. Ansley, Deceased,
By W. N. REDWINE,
CHESTER HOWE,
Attorneys for Appellant.

The foregoing claim of appeal is hereby allowed.
This the 2nd day of October 1905.

WILLIS VAN DEVANTER,
Presiding Judge U. S. Circuit Court of Appeals, Eighth Circuit.

(Endorsed:) No. 2178. W. A. Walker, Executor of the estate of W. H. Ansley, deceased, Appellant, *vs.* J. W. McLoud,
169 Trustee, *et al.* Appellees. Petition for Appeal. Filed Oct. 4, 1905, John D. Jordan, Clerk.

(*Assignment of Errors.*)

And on the fourth day of October, A. D. 1905, an assignment of errors was filed in the Clerk's office of said Circuit Court of Appeals in said cause, in the words and figures following, to-wit:

UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

W. A. WALKER, Executor of the Estate of W. H. Ansley, Deceased, Appellant,
vs.
J. W. MCLOUD, Trustee, and FRANCIS I. GOWEN, Receiver of the Choctaw Coal and Railway Company, Appellees.

Assignment of Errors.

Comes W. A. Walker, Executor of the Estate of W. H. Ansley, deceased, Appellant, and says:

That in the Records, Actions, Judgment and Judicial Proceedings, in the cause known and styled; W. H. Ansley, Plaintiff, *vs.* J. W. McLoud, Trustee and Francis I. Gowen, Receiver of the Choctaw Coal & Railway Co., Defendants, in the U. S. Court for the Central District of the Indian Territory, as well as in the Actions, rulings, records, Judicial Proceedings and Opinions, in the U. S. Court of Appeals in the Indian Territory in the case known and styled in that Court as W. H. Ansley, Appellant, *vs.* J. W. McLoud, Trustee, *et al.*, Appellees, which was, and is, the same identical case as the case aforesaid, first brought in the U. S. District Court for the Central District of the Indian Territory aforesaid, also in the Actions, Rulings, Records, Judicial Proceedings and Opinions, in the U. S. Circuit Court of Appeals for the Eighth Circuit, in the case known and styled: W. A. Walker, Executor of the Estate of W. H. Ansley, Deceased, *vs.* J. W. McLoud, Trustee & Francis I. Gowen, Receiver of the Choctaw Coal & Railway Company, which is the same case and cause of action first brought and tried as above set forth, in the U. S. Court for the Central District of the Indian Territory, and thereafter appealed to the U. S. Court of Appeals in the Indian Ter-

ritory, and thereafter appealed to the U. S. Circuit Court of Appeals for the Eighth Circuit, said W. H. Ansley having died while said cause was pending in the said Court of Appeals for the Eighth Circuit, and said cause of action there being revived in the name of W. A. Walker, Executor, of the Estate of W. H. Ansley, Deceased, Appellant, *vs.* J. W. McLoud, Trustee, & Francis I. Gowen, Receiver of the Choctaw Coal & Railway Co., Appellees.

There is manifest Error in the Actions, Records, Judgments and Judicial proceedings, in the U. S. Court for the Central Dis-
170 trict of the Indian Territory, also in the Actions, Rulings, Judgments judicial proceedings and Opinions of the U. S. Court of Appeals in the Indian Territory, and also in the Actions, rulings, Judgments Judicial proceedings and Opinions, of the U. S. Court of Appeals for the Eighth Circuit, in this, to-wit:

First: That said U. S. Court for the Central District of the Indian Territory erred as follows: There is error in the decree of the U. S. Court in this, that it is therein adjudged and decreed that Plaintiff take nothing by this suit, and that Francis I. Gowen, Receiver, recover from Plaintiff all his costs herein laid out and expended, the effect of which is to dismiss Plaintiff's suit, whereas said decree should have sustained said action, and rendered the relief sought, which decree and Judgment was excepted to, by the Appellant;

Second: The Court erred in excluding from the deposition of William Ansley, a witness on behalf of the Plaintiff, the following, to wit: "and the Chief ratified my action as to the sale and payments of said property, and instructed me to proceed at once and employ attorneys to assist me in getting possession of the property for the purchasers; and I at once employed attorneys to assist the Plaintiff W. H. Ansley, in obtaining possession of the property sold by me as Sheriff. Moseley & Smith, attorneys of Denison, Texas, a firm of Lawyers; and Cole & Redwine, attorneys at South McAlester, were employed by the Chief of the Choctaw Nation to assist Plaintiff in obtaining possession of said property.

In October 1895, the Choctaw Council passed a special act, appropriating Fifteen Hundred ($1500.) Dollars, to employ attorneys to represent the Choctaw Nation and to assist the Plaintiff in obtaining possession of the property aforesaid. In the December following contracts employing the aforesaid lawyers were signed by Jeff Gardner, Chief of the Choctaw Nation and my action a- Deputy Sheriff aforesaid, as to the sale and payments of the purchase price of the aforesaid property, was ratified and accepted by the Choctaw Nation" to which ruling of the Court in excluding said evidence Plaintiff then and there duly excepted.

171 Third: The Court erred in overruling and disallowing Plaintiff's objection to the introduction in evidence of the report of Yancy Lewis, Special Master Commissioner in the cause of Langhorn Wister, *et al.*, *vs.* The Choctaw Coal & Railway Company, of July 17th, 1894, and in admitting said report in evidence—to which the Appellant excepted;

Fourth: The Court erred in over-ruling and disallowing the Plaintiff's objection to the introduction in evidence of a final order

or decree, discharging the Receiver in the cause of Leghorn Wister *et al., vs.* The Choctaw Coal & Railway Company, which was entered on the 2nd day of March, 1895, in the U. S. Court for the Central District of the Indian Territory at South McAlester, and in admitting said order in evidence, to which action of the Court the Appellant excepted at the time;

Fifth: The Court erred in over-ruling and disallowing Plaintiff's objection to the introduction in evidence of a decree in the cause of Leghorn Wister *et al., vs.* The Choctaw Coal & Railway Company which was entered on the 17th day of July, 1894, in the U. S. Court for the Central District of the Indian Territory, at South McAlester, and in admitting said order or decree in evidence, to which ruling of the Court the Appellant then and there excepted;

Sixth: The Court erred in over-ruling and disallowing Plaintiff's objection to the introduction in evidence of the supplemental report of Yancy Lewis, Special Master Commissioner in the cause of Leghorn Wister *et al., vs.* The Choctaw Coal & Railway Company, the said report being made to the U. S. Court for the Central District of the Indian Territory, and in admitting said report in evidence; to the ruling of said Court in admitting said report in evidence the Appellant then and there excepted;

Seventh: The Court erred in over-ruling and disallowing Plaintiff's objection to the introduction in evidence of the final Decree in the cause of Langhorn Wister *et al., vs.* The Choctaw Coal & Railway Company, which was entered on the 13th day of October, 1894, in the U. S. Court for the Central District of the Indian Territory,
at South McAlester, and in admitting said final decree in
172 evidence, to which ruling of the Court the Appellant then
and there excepted;

Eighth: The Court erred in over-ruling and disallowing Plaintiff's objection to the introduction in evidence of the report of Yancy Lewis, Master in Chancery, in the cause of Edwin Chadick, Trustee, *vs.* Receiver of the Choctaw Coal & Railway Company, in the United States Court for the Central District of the Indian Territory, and in admitting said report in evidence, over the objection of said Appellant, to which he then and there excepted;

Ninth: The Court erred in ordering and decreeing that the Plaintiff, W. H. Ansley, take nothing by this suit, and ordering and decreeing that the Defendant, Francis I. Gowen, Receiver, have and recover of and from the Plaintiff all his costs, laid out and expended to which ruling of the Court Appellant then and there excepted;

Tenth: The Court erred in dismissing Plaintiff's suit and refusing to grant the relief sought, and in taxing the Plaintiff with the costs in this cause;

Eleventh: That the said United States Court of Appeals in the Indian Territory erred:

I. In not reversing the Judgment of the U. S. Court for the Central District of the Indian Territory, because of each several errors of the latter Court as to its actions, ruling, Judgments and Judicial proceedings, and in not rendering Judgment in favor of said Appellant according to the prayer of his Complaint;

II. The U. S. Court of Appeals in the Indian Territory erred in

holding that Section 7 of the treaty of 1855 between the United States Government and the Choctaw and Chickasaw Tribe of Indians did not give said Choctaw Tribe of Indians authority to pass laws declaring forfeitures of property built on the public domain of the Choctaw Nation in violation of said treaty and the United States Laws, which section reads as follows, to-wit:

"So far as may be compatible with the constitution of the United States and the laws made in pursuance thereof, regulating trading and intercourse with the Indian Tribes, the Choctaws and Chickasaws shall be secured in the unrestricted right of self-government and full jurisdiction over persons and property within their
173 respective limits; excepting however, all persons with their property, who are not by birth, adoption or otherwise, citizens or members of either the Choctaw or Chickasaw tribe; and all persons not being citizens or members of either tribe, found within their limits, shall be considered intruders, and be removed from, and kept out of the same, by the United States Agent, assisted if necessary, by the military, with the following exceptions, viz: Such individuals as are now, or may be in the employment of the Government and their families, those peacefully travelling, or sojourning in the country, or trading therein, under license from the proper authority of the United States; and such as may be permitted by the Choctaw- or Chickasaws, with the assent of the United States agent, to reside within their limits, without becoming citizens or members of either of said tribes."

III. The United States Court of Appeals in the Indian Territory erred in holding that article 43 of the treaty of 1866, between the United States Government and the Choctaw & Chickasaw Tribe of Indians, did not give said Tribe of Indians authority to enact and pass laws regulating the forfeitures of non-citizens' improvements built on the public domain of the Choctaw and Chickasaw Nation in violation of Section 7 of the Treaty of 1855 between the United States Government and the Choctaw and Chickasaw tribe of Indians and in violation of Article 43 aforesaid, of the Treaty of 1866 between the Choctaw and Chickasaw Tribe of Indians and the United States Government, and in violation of the acts of Congress. Article 43 of the Treaty of 1866 aforesaid, reads as follows:

"The United States promises and agrees that no white person except officers, agents and employes of the Government, and of any internal improvement company, or persons travelling through, or temporarily sojourning in, the said nations, unless formally incorporated and naturalized by the joint action of the authorities of both nations into one of the said Nations of Choctaw- and Chickasaws, according to their laws, customs, or usages; but this article is not to be construed to affect parties heretofore adopted, or to prevent the employment temporarily of white persons who are teachers,
174 mechanics, or skilled in agriculture, or to prevent the legislative authorities of the respective nations from authorizing such works of internal improvements as they may deem essential to the welfare and prosperity of the community, or to be taken to interfere with or invalidate any action which has heretofore been had in this connection by either of the said nations."

IV. The U. S. Court of Appeals in the Indian Territory erred in holding that there was no provision in any treaty made by, and between, the Choctaw & Chickasaw Tribe of Indians and the United States government, wherein said Choctaw and Chickasaw Tribe of Indians has the authority to enact any legislation that shall affect or control non-citizens' improvements built upon the public domain of the Choctaw Nation in violation of the acts of Congress and the treaties between the United States Government and the Choctaw and Chickasaw Tribe of Indians;

V The U. S. Court of Appeals in the Indian Territory erred in holding that the act of the Choctaw Council, known as "Claims and Improvements," did not give the Choctaw Nation and its Sheriffs thereof, the right to advertise and sell improvements built upon the public do*main* of the Choctaw Nation by non-citizens thereof in violation of the treaties between the U. S. Government and the Choctaw and Chickasaw tribe of Indians, and the various acts of Congress, Section 2, of said Act, known as "Claims and Improvements," under which the property in question was sold, reads as follows:

"Section 3, Article 1. Be it enacted by the General Council of the Choctaw Nation Assembled; All non-citizens not in the employ of a citizen of the Choctaw Nation, under the provisions of existing treaty stipulations, who have made or bought improvements in said Nation, are hereby notified that they are allowed to sell their so-called improvements to citizens, and if such non-citizens fail to comply with this section, then it shall be the duty of the Sheriffs of the Counties in which such improvements may be located to advertise the same for sale in thirty days, and sell the same at the appointed time to the highest Choctaw citizen bidder for cash, one half of which shall be paid into their respective treasuries, and the other half into
175 the National Treasury, provided however, that if any such non-citizen shall fail or refuse to deliver possession of such an improvement, he shall be reported by the Sheriff of that county to the Principal Chief, and by said Chief to the U. S. Indian Agent, to take proper steps for the removal and prosecution of such offender, under Section 2118, of the Revised Statutes of the United States; provided further, that a notice of sale shall be posted by the Sheriff in three public places in the county, which shall be legal notice to persons against whom the law operates."

VI. The U. S. Court of Appeals in the Indian Territory erred in holding that the act of the Choctaw Council knows as "Claims and Improvements," was unconstitutional and null and void.

VII. The U. S. Court of Appeals in the Indian Territory erred in holding that the property in controversy was not forfeited to the Choctaw Nation when the same was built upon the public domain of the Choctaw Nation and off of the right of way of the Choctaw Coal and Railway Company, and in violation of the treaties between the United States Government and the Choctaw and Chickasaw Tribe of Indians, and in violation of various acts of Congress and more especially in violation of Section 10 of the acts of Congress, granting the Choctaw Coal and Railway Company a right of way through the Choctaw Nation, which said Section 10 reads as follows:

"That the said Choctaw Coal & Railway Company shall accept this right of way upon the express condition, binding upon itself, its successors and assigns, that they will neither do, advise, or assist in any efforts looking towards the change or extinguishment of the present tenure of the Indians in their lands, and will not attempt to secure from the Indians any further grant of land or its occupancy than is hereinbefore provided; provided, that any violation of the conditions mentioned in this section shall operate as a forfeiture of all the rights and privileges of said Railway Company under this act."

VIII. The U. S. Court of Appeals in the Indian Territory erred in holding that the action against Francis I. *Goacn*, as Re-
176 ceiver of the Choctaw Coal & Railway Company was improperly brought, and in not holding that he was a proper party in this action;

IX. The U. S. Court of Appeals in the Indian Territory erred in holding that the objections raised by Appellees in the Court of Appeals in the Indian Territory for the first time, that Francis I. Gowen, Receiver, was an improper party to said action, did not come too late—the objection not being raised in the U. S. Court for the Central District of the Indian Territory;

X. The United States Court of Appeals for the Indian Territory, erred in affirming the Judgment of the United States Court for the Central District of the Indian Territory, and in not reversing the Judgment of the United States Court for the Central District of the Indian Territory, and in not entering a Judgment for the Appellant and granting the relief prayed for in his Pleadings.

XI. The United States Circuit Court of Appeals for the Eighth Circuit, erred:

I. Said United States Circuit Court of Appeals erred in not reversing the Judgment of the United States Court of Appeals for the Indian Territory and the United States Court for the Central District of the Indian Territory, because of each of the several errors of each of the aforesaid Courts in the Actions, rulings, Judgments and Judicial proceedings, and in not rendering Judgment in favor of said Appellant, according to the prayer of his Complaint.

II. Said United States Circuit Court of Appeals for the Eighth Circuit erred in holding that the sale made by the Sheriff of the property in controversy, to the purchasers thereof, was null and void, and did not convey any title.

III. Said United States Circuit Court of Appeals for the Eighth Circuit, erred in holding that the purchasers of the property in controversy, by reason of the terms of sale made by said Indian Sheriff, did not acquire any interest or right in said property.

IV. Said United States Circuit Court of Appeals for the Eighth Circuit, erred in holding that the property in controversy was not forfeited to the Choctaw Nation, and in further holding that said Choctaw Nation did not have authority to sell and convey said
177 forfeited property, according to the customs and construction placed upon said Indian Statute, under which said sale was made.

V. Said United States Circuit Court of Appeals for the Eighth

Circuit, erred in affirming the Judgment of the United States Court of Appeals for the Indian Territory, when in fact, the grounds upon which the decision of said United States Circuit Court of Appeals for the Eighth Circuit, based its opinion, were never decided by said United States Court of Appeals for the Indian Territory said United States Court of Appeals for the Indian Territory having decided said action upon a different proposition of law and ground than the one decided by said United States Circuit Court of Appeals for the Eighth Circuit.

VI. The United States Circuit Court of Appeals for the Eighth Circuit, erred in holding that it was not necessary to consider whether the Appellees were intruders in the Choctaw Nation, and holding the improvements in violation of law, and that if they were, Appellant had no right to disturb them.

VII. The United States Circuit Court of Appeals for the Eighth Circuit erred in holding that the duty of enforcing the Choctaw laws in regard to the property in controversy was not within the jurisdiction of said Court.

VIII. The United States Circuit Court of Appeals for the Eighth Circuit erred in affirming the Judgments of the United States Court of Appeals for the Indian Territory and the United States Court for the Central District of the Indian Territory, and in not reversing the Judgments of the United States Court of Appeals for the Indian Territory and the United States Court for the Central District of the Indian Territory, and in not entering a Judgment for Appellants and granting the relief prayed for in his pleadings.

Wherefore: And for divers other reasons and causes apparent on the face of the Record in the United States Circuit Court of Appeals for the Eighth Circuit, the United States Court of Appeals for the Indian Territory and the United States Court for the Central District of the Indian Territory, Appellant now prays that said Actions, Rulings, Orders, Judgments and Judicial Proceedings heretofore had,
as aforesaid, in the United States Circuit Court of Appeals
178 for the Eighth Circuit, the United States Court of Appeals for the Indian Territory and the United States Court for the Central District of the Indian Territory, may be reversed and forever as naught held, and esteemed, and that Judgment here in this Court, (The Honorable United States Supreme Court), may be entered in favor of Appellant, and the relief granted as prayed for in his Pleadings.

W. A. WALKER,
Executor of Estate of
W. H. Ansley, Deceased.
CHESTER HOWE AND
W. N. REDWINE,
Attorneys for Appellant.

(Endorsed:) No. 2178. W. A. Walker, Executor of the estate of W. H. Ansley, Deceased, Appellant, *vs.* J. W. McLoud, Trustee, *et al.*, Appellees. Assignment of Errors. Filed Oct. 4, 1905, John D. Jordan, Clerk.

(*Bond on Appeal.*)

And on the fourth day of October, A. D. 1905, a bond on appeal was filed in the Clerk's office of said Circuit Court of Appeals in said cause, in the words and figures following, to-wit:

Know all men by these presents: That we, W. A. Walker, Executor of the estate of the deceased, W. H. Ansley, as Principal, and W. T. Wood and W. T. Hardy, as Sureties, are held and firmly bound unto J. W. McLoud, Trustee, and Francis I. Gowen, Receiver, of the Choctaw Coal and Railway company in the just sum of Five Hundred Dollars ($500.00) to be paid to the said J. W. McLoud, Trustee, and Francis I. Gowen, Receiver, of the Choctaw Coal and Railway Company, or their heirs, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this the 28th day of September, in the year of our Lord one thousand nine hundred and five.

Whereas: Lately, at the may term A. D. 1905 of the United States Circuit Court of Appeals, for the Eighth Circuit, in a suit
179 depending in said Court between W. A. Walker, Executor of the estate of W. H. Ansley, deceased, Appellant, and J. W. McLoud, Trustee, and Francis I. Gowen, Receiver, of the Choctaw Coal and Railway Company, Appellees, judgment was entered against the said W. A. Walker, Executor of the estate of W. H. Ansley, deceased, Appellant, for the costs of the aforesaid action, and the said W. A. Walker, Executor of the estate of W. H. Ansley, deceased, has obtained an appeal from the said United States Circuit Court of Appeals for the Eighth Circuit, to the Supreme Court of the United States at Washington, D. C., to reverse the judgment in the aforesaid suit, and have the errors corrected, and a judgment entered in favor of Appellant, and a Citation directed to the said J. W. McLoud, Trustee, and Francis I. Gowen, Receiver, of the Choctaw Coal and Railway Company, admonishing them to be, and appear, in the Supreme Court of the United States at Washington, D. C., sixty days from, and after, the date of said Citation.

Now the condition of the above obligation is such that if the said W. A. Walker, Executor of the estate of W. H. Ansley, deceased, shall prosecute his appeal to effect and answer all damages and costs if he shall fail to make good his Plea, then, the above obligation to be void, else, to remain in full force and effect.

W. A. WALKER,
Executor of Estate of
W. H. Ansley, Deceased.
(Surety) W. T. WOOD.
(Surety) W. T. HARDY.

Qualification of Sureties.

INDIAN TERRITORY, *Central District:*

W. T. Wood, *who after* being duly sworn, deposes and says, that he is surety on the within and foregoing bond and is a resident of the Central District of the Indian Territory, and has personal property located within said Central District of the Indian Territory, over and above his debts, liabilities and exemptions to the amount
180 and sum of $2000.00.

W. T. WOOD.

Subscribed and sworn to before me this the 27th day of September, 1905.

C. B. BURNHAM,
[SEAL.] *Notary Public.*

INDIAN TERRITORY, *Central District:*

W. T. Hardy, *who after* being duly sworn, deposes and says that he is surety on the within and foregoing bond and is a resident of the Central District of the Indian Territory, and has personal property located within the said Central District of the Indian Territory, over and above his debts, liabilities and exemptions, to the amount and sum of $1000.00.

W. T. HARDY,

Subscribed and sworn to before me this the 28th day of September, 1905.

SEYMOUR G. SMITH,
[SEAL.] *Notary Public.*

My Commission Expires the 15 day of May, 1909.

(Endorsed:) No. 2178. W. A. Walker, Executor, of the estate of W. H. Ansley, deceased, Appellant, *vs.* J. W. McLoud, Trustee, *et al.*, Appellees. Bond. The within Bond is hereby approved. This the 2nd day of Oct. 1905. Willis Van Devanter, Presiding Judge of the U. S. Circuit Court of Appeals for the Eighth Circuit. Filed Oct. 4, 1905, John D. Jordan, Clerk.

(*Citation.*)

And on the eleventh day of October, A. D. 1905, a citation was filed in the Clerk's office of said Circuit Court of Appeals in said cause, the original of which with the acceptance of service endorsed thereon is hereto attached and herewith returned:

181 THE UNITED STATES OF AMERICA:

To J. W. McLoud, Trustee, and Francis I. Gowen, Receiver of the Choctaw Coal and Railway Company, Greeting:

You and each of you are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the Clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein W. A. Walker, Executor of the estate of W. H. Ansley, deceased, is Appellant and you are Appellees, to show cause, if any there be, why the decree rendered against the said Appellant, as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Willis Van Devanter, Presiding judge of the United States Circuit Court of Appeals for the Eighth Circuit, this 2nd day of October, A. D. 1905.

WILLIS VAN DEVANTER,
Presiding Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

I hereby accept due personal service of this citation on behalf of J. W. McLoud, Trustee, and Francis I. Gowen Receiver of the Choctaw Coal and Railway Company Appellees. This the 7th day of October 1905.

C. B. STUART,
Attorney for Appellees.

[Endorsed:] No. 2178. W. A. Walker, Executor, etc., Appellant, *vs.* J. W. McLoud, Trustee, *et al.* Citation. Filed Oct. 11 1905 John D. Jordan, Clerk.

182 (*Clerk's Certificate.*)

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing one hundred eighty-four pages contain full, true and complete copies of all the pleadings, proceedings and record entries, including the opinion of said Circuit Court of Appeals, in a certain cause in said Court wherein W. A. Walker, Executor of the estate of W. H. Ansley, deceased, was Appellant, and J. W. McLoud, Trustee, and Francis I. Gowen, Receiver of the Choctaw Coal and Railway Company, were Appellees, No. 2178, May Term, 1905, as full, true and complete as the same remain on file and of record in my office.

I do further certify that the original citation, with the acceptance of service endorsed thereon, is hereto attached and herewith returned.

I do further certify that on the twenty-fifth day of July, A. D. 1905, a mandate was issued out of said Circuit Court of Appeals, directed to the Judges of the United States Court for the Central District of the Indian Territory, in said cause.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Circuit Court of Appeals, at office in the City of St. Louis, Missouri, in the Eighth Circuit, this eleventh day of October, A. D. 1905.

[Seal United States Circuit Court of Appeals,
Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals
for the Eighth Circuit.

Endorsed on cover: File No. 19,948. U. S. Circuit Court Appeals, 8th Circuit. Term No. 140. W. A. Walker, executor of the estate of W. H. Ansley, deceased, appellant, *vs.* J. W. McLoud, Trustee, and Francis I. Gowen, Receiver of The Choctaw Coal & Railway Co. Filed October 28th, 1905. File No. 19,948.

FILE COPY.

Office Supreme Court U. S.
FILED
OCT 8 1906
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States

October Term, 1906.

No. 140.

W. A. WALKER, Executor of the Estate of W. H. ANSLEY, Deceased, Appellant,

vs.

J. W McCLOUD, Trustee, and FRANCIS I. GOWEN, Receiver, of the Choctaw Coal and Railway Company, Appellees.

BRIEF FOR APPELLANT.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

CHESTER HOWE,
GEORGE R. WALKER,
W. N. REDWINE,
PRESLIE B. COLE,
J. O. POOLE,
Attorneys for Complainant and Appellant.

IN THE SUPREME COURT OF THE
UNITED STATES.
October Term, 1906.
No. 140.

W. A. WALKER, Executor of the Estate of W. H. ANSLEY,
Deceased, Appellant.

vs.

J. W McCLOUD, Trustee, and FRANCIS I. GOWEN, Receiver,
of the Choctaw Coal and Railway Company, Appellees.

BRIEF FOR APPELLANT.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

STATEMENT OF THE CASE.

This is an action in the nature of ejectment on the equity docket. It was filed on the 13th day of November, 1895, and was instituted for the purpose of securing possession of certain buildings and right of occupancy to the land on which said buildings were situated, and to quiet plaintiff in the title and possession of said property, and to remove cloud from title.

The material averments of the complainant are as follows, to-wit: Said Plaintiff is a Choctaw Indian by blood and resides at South McAlester, I. T. Said Defendants, J. W. McCloud, trustee, and Francis I. Gowen, receiver, of the Choctaw Coal & Railway Co. appear as trustee and receiver of property claimed by said company, so it will be considered in this brief that the Choctaw Coal & Railway Co. is the real defendant in this case.

Said Choctaw Coal & Railway Co. is a corporation organized under the laws of Minnesota and by an Act of Congress authorized to do business in the Indian Territory, and was limited in said act to a certain amount of Indian lands in the Indian Territory as a right of way, and was prohibited from going off of its right of way and occupying other lands.

That on and prior to the time the Choctaw Coal & Railway Company commenced the construction of its railway in and through the Indian Territory, one Fritz Sittel, an inter-married citizen of the Choctaw Nation, who had inter-married with Melvina Pitchlynn, a Choctaw Indian by blood, settled and occupied a tract or parcel of land where South McAlester is now situated; said Fritz Sittel and his wife occupied said land as a farm, the same being common domain of the Choctaw Nation and held in common by the Choctaw tribe of Indians.

Said Fritz and Melvina Sittel had the exclusive right of occupancy of said common domain of the Choctaw Nation so long as

they should occupy the same according to the customs and laws of the Choctaw Nation.

That in the year 1889, said Choctaw Coal and Railway Co., built its line of railway through South McAlester, and its right of way ran through the lands occupied by said Sittel; that while said Choctaw Coal & Railway Co., was building its line of railway along where South McAlester is now located, the officers of said Choctaw Coal & Railway Co., towit: Charles Hartshorne, President of said Railway Co., and William C. Alderson, treasurer of said Company, by and through their General Manager, Edwin Chadick, conspired with Fritz Sittel to build a town where South McAlester is now located, and to build and own houses off of said railway's right of way and in violation of the Act of Congress granting said company its right of way, and in the year 1890 said Choctaw Coal & Railway Co., platted said land aforesaid, or a large portion thereof, and laid out the city of South McAlester distinguishing upon said plat streets, lines, alleys, blocks, lots, etc., and caused said plats to be publicly distributed. That upon said plat the premises in controversy are designated as follows, towit: Lots, Nos. 23, 24, 25 and 26, in Block 48; and lots, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 12; in block 46 and the improvements thereon. All of the aforesaid lots and improvements are located off the right of way of said Choctaw Coal & Railway Co., and the improvements erected on said lots were commenced in 1889, and were built by the Choctaw Coal & Railway Co., and after most of all the buildings had been completed, except the building known as the Kali Inla building, which was under construction, said Fritz and Melvina Sittel executed a mort-

gage on said buildings to Edwin D. Chadick, trustee, to secure Charles Hartshorne and William C. Alderson and their associates in a pretended loan of money on the aforesaid buildings, the associates of said Charles Hartshorne and William C. Alderson being the Choctaw Coal & Railway Co.

That said mortgage was executed by said Sittel and wife on the 23rd day of October, 1890, to Edwin D. Chadick, as trustee, and his successors to secure a pretended loan of money to said Sittel from Charles Hartshorne, William C. Aldersonand their associates, for the sum of $45,000.00, alleged to have been advanced by said Charles Hartshorne and William C. Alderson, of Philadelphia, Pa., and their associates, for the purpose of erecting improvements on the lands of said Sittel and wife in South McAlester aforesaid, and the legal title to said lands and improvements is attempted to be conveyed by said instrument to said Chadick, trustee.

That on the 8th day of January, 1891, upon petition of Langhorne Wister and others filed on said 8th day of January, 1891, aforesaid, in the United States Court for the Central District of the Indian Territory, Francis I. Gowen and Edwin D. Chadick, were appointed receivers for the Choctaw Coal & Railway Co., and the property and franchises, rights of said company, together with the right of operation and management vested in said receivers; subsequently said Chadick resigned, and his successor, James W. Throckmorton died, and thereafter Gowen was retained as sole receiver: that while said Francis I. Gowen was receiver of the Choctaw Coal & Railway Co., aforesaid, he associated himself with Edwin D.

Chadick, trustee, and caused to be completed the erection of the Kali Inla building, and all other buildings under construction by the Choctaw Coal and Railway Co., when said Company went into the hands of said receiver, the money furnished for the completion of said buildings was furnished by the Choctaw Coal & Railway Co.

That while said buildings were being erected by said Choctaw Coal & Railway Co., aforesaid, and on the 14th day of October, 1890, there was passed by the Choctaw Council and approved by the Governor of the Choctaw Nation, an Act of said Nation, demanding of the Choctaw Coal & Railway Co. that it file within sixty days evidence that it is in no way connected with the townsite syndicate and that $2,000.00 is appropriated to employ counsel to represent tthe Nation in this matter. A copy of said act was duly served on said company.

That said improvements were erected and were intended to be erected with the money furnished by said Chadick, trustee, and his associates (Choctaw Coal & Railway Co.) and when said houses and improvements were erected they should be the property of said Chadick, trustee, and his associates (towit, The Choctaw Coal & Railway Co.), and the same is now used by them and has been since their construction.

That while said trust deed, executed by Sittel and wite, to Chadick, trustee, and his associates, purports to leave the title in Sittel and wife, the fact is that it was intended to vest, and did vest the possession and ownership of said improvements in the said

Chadick and his associates.

That said trust deed was made and executed in violation of the laws and customs of the Choctaw Nation and in violation of the laws and treaty stipulations of the United States, and was executed for the express purpose of evading and circumventing the laws and customs and treaties aforesaid and to enable the Choctaw Coal & Railway Co. to own and possess lots and improvements in the Choctaw Nation, off its right of way in South McAlester, I. T., in isolation of the laws and treaties of the United States.

That on the 30th day of October, 1888, there was approved by the Governor of the Choctaw Nation an Act of the General Council of the Nation which provides as follows, towit:

> "That all non-citizens, not in the employment of a citizen of the Choctaw Nation, and not authorized to live in the Choctaw Nation under the provisions of the existing treaty stipulations who have made or bought improvements in said Nation, are hereby notified that they are allowed to sell their so-called improvements to citizens, and if such non-citizens fail to comply with this section then it shall be the duty of the sheriffs of the counties in which such improvements may be located to advertise the same for sale in thirty days and sell the same at the appointed time to the highest Choctaw citizen bidder for cash; one half of which shall be paid into their respective treasuries and the other half into tthe nation treasury, etc."

That the Choctaw Coal & Railway Co., advanced the money and caused to be erected the improvements heretofore described; that there was no warrant in law for the erection of the improvements but there is an express prohibition upon the same to be found in the laws and customs of the Choctaw Nation, and the laws and Treaties of the United States, and said Sittel and wife and the defendant conspired together to evade and circumvent the laws, customs and treaties of the Choctaw Nation and the United States with reference to the evasion of the public domain of the Choctaw Nation.

That said improvements were erected for the purpose of renting and leasing and controlling the same, together with the land on which they were situated to non-citizens of the Choctaw Nation, thereby working in violation of law a practical confisication of a part of the public domain of the Choctaw Nation.

That said Chadick was General Manager of said company and had full and complete control of its affairs and after said company went into the hands of receivers the said Chadick and Gowen, the said Gowen associated himself with the said Chadick in the pretended trust deed and acted jointly as receivers, caused to be completed the erection of all buildings under construction at the time said company went into the hands of the receivers. That said McLoud was attorney for defendant and counseled, abetted and advised the advance of money by said defendant for the erection of sai improvements and that he procured the removal of said Chadick as trustee in said fraudulent deed of trust and had himself substituted there-

for.

That in the case of Chadick, trustee, vs. Gowen and Throckmorton, receivers, decided in the U. S. Court at South McAlester, it was adjudgedq that the Choctaw Coal & Railway Co., had advanced $53,220.96 for the erection of the improvements aforesaid and that Hartshorne and Alderson had advanced no part of the money and that McLoud was substituted as trustee in the place of and stead of Chadick, resigned.

That in the year 1895 the Governor of the Choctaw Nation directed the Indian sheriff of Tobucksey county, Choctaw Nation, to advertise and sell the aforesaid improvements to some citizen of the Choctaw Nation, the same being the property of the Choctaw Nation and held by the Choctaw Coal and Railway Co., said sheriff aforesaid was directed to sell said improvements as the property of the Choctaw Nation.

That on the 24th day of June, 1895, in pursuance of said order of said Governor of the Choctaw Nation, and under an by virtue of the laws of the Choctaw Nation, said sheriff of Tobucksey County, after advertising said property according to law, sold the same to citizens of the Choctaw Nation, at which sale E. T. Richards, a Choctaw citizen by intermarriage, James Pusley and W. H. Ansley, citizens by blood, became the purchasers and subsequently Richards and Pusley conveyed to W. H. Ansley, the plaintiff herein.

That all the sheriff's actions as to the sale and payment of said

property were subsequently reported to the Governor of the Choctaw Nation, and the General Council thereof, and approved by said Governor and Council.

That after the sale of said improvements by said Indian Sheriff of Tobucksey county, said J. W. McCloud, trustee, continued to hold possession of said improvements under and by virtue of said fraudulent trust deed, and is in the possession of the same claiming to act as the trustee of defendant and is renting the same to non-citizens and persons not authorized by law to reside in the Choctaw Nation, but expressly prohibited from so doing, and is asserting the legal title to the same, with the right of occupancy to the land, and title as to the improvements and was so doing in the year 1895, and prior to the sale by the Indian sheriff.

That McCloud if not restrained, will on the 30th day of December, 1895, sell said property in furtherance of said fraudulent trust deed and that the same is of the reasonable value of $60,-900.00, and of the monthly rental value of $300.00, and that the right claimed under said trust deed, was well known to both McLoud and Gowen, and that the same could not be enforced as against plaintiff, in any court of either law or equity.

That the said property constitutes no part of the right of way of the defendant but is removed therefrom to a distance of about 400 feet and that the Act of Congress of February 18th, 1888, granting to the defendant a right of way through the Choctaw Nation prescribes that it shall have 100 feet in width and that it shall accept

said right of way upon the express condition that it will neither aid, advise nor assist in changing or extinguishing of the tenure of the Indians in their land and will not attempt to secure from the Indians any further grant of lands or its occupancy than is hereinbefore provided under pains of forfeiting the rights and privileges granted.

That Sittel and wife have long since ceased to assert any interest in said property and if they ever claimed to own said property and improvements, have long since abandoned such claim and by reason of the laws of the Choctaw Nation, all of which plaintiff pleads and prays that the court will take judicial notice of the same, Sittel and wife lost, relinquished and forfeited all right to the exclusive possession of said lands or the improvements thereon and the same became subject to the control of the Choctaw Nation and was so subject at the time of the sale by said sheriff of Tobucksey County.

THE PRAYER.

Said complaint concludes with a prayer to be quieted in the possession of the premises and in the title to the improvements for the various reasons assigned and that an injunction or restraining order issue to restrain McLoud, trustee, from selling said property and that said injunction be made perpetual and that said trust deed be annulled and that plaintiff be decreed the possession of said property and for general relief.

See record pp. 2 to 15 inclusive.

After a general denial of the averments in the complaint defendants answers as follows:

DEFENDANT'S ANSWER.

And for further answer defendant says, that prior to the execution of said deed of trust and the erection of the improvements, Chadick was the manager of the defendant, and that not acting for the defendant, but personally, and without the knowledge of Hartshorne and Alderson and without the knowledge of the defendant, Chadick advanced a large sum of money belonging to the defendant for the erection of the buildings aforesaid.

(2.) That in the case of Chadick, trustee, vs. The Receivers, in which Chadick undertook to enforce rights alleged to have been acquired under, and by virtue of, the trust deed from Sittle and wife, the matter having been referred to Yancey Lewis, Master in Chancery, who reported adverse to Chadick's claim and said report having been confirmed, it was therefore judicially ascertained that Chadick and the Sittels entered into the trust deed for their own private gain and for the purpose of defrauding the defendant, whose money was advanced by Chadick without its consent.

(3.) That the defendant by reason of the premises became entitled to an equity in the improvements constructed with its money and it is entitled to hold and occupy the same for the purpose of reimbursing itself for money advanced by Chadick and that this equity should be impressed by this Court upon the premises.

(4.) That the money advanced has never been collected and that the premises in question and the rents and revenues of the same are not sufficient at the highest value, to satisfy the mortgage indebtedness. That the money invested by Chadick was not known by defendant to be invested for an unlawful purpose and that there was no intention to violate any law of the Choctaw Nation in the erection of said improvements and that in both law and fact, plaintiff is attempting to assert a fraudulent claim and should be repelled.

(5.) That said sheriff's sale is not valid because made in violation of an order of the United States Court of the Central District and that the purchase was made for the benefit of the deputy who could not directly become a purchaser at his own sale, and that no consideration passed, and that the price was grossly inadequate.

(6.) That the sale was not in accordance with the laws of the Choctaw Nation; that the sale was on a credit; that there was no opportunity for competitive bidding; that the Choctaw Nation has no jurisdiction over the person or property of a non-citizen; that the sale was made and the forfeiture declared without any hearing in favor of defendant and without giving it any opportunity to assert its defense; and that the sheriff officially declared defendant an intruder without giving defendant any opportunity to show that said declaration was untrue.

Record pp. 26 to 31 inclusive.

Plaintiff replied to the affirmative matter set forth in defendant's answer by a general traversty or denial of all such matter.

See record pp. 34 & 35 inclusive.

Exhibits to complaint and notice of application for an injunction.

Record pp. 15 to 26 inclusive.

Exhibits to defendants' answer.

Record pp. 31 to 33.

Then was there introduced in evidence on behalf of the plaintiff the depositions of Edwin D. Chadick, C. S. Jones, Fritz Sittel, Jonas Peabody, William Ansley , 2nd Dep. Fritz Sittel, 2nd Dep. William Ansley, Dep. Jack Ellis and W. H. Ansley, in the order named.

Record pp. 36 to 54 inclusive.

Defendant introduced as evidence the deposition of W. H. Ansley.

Record pp. 55 to 56, inclusive.

An agreement of Counsel as to certain evidence introduced by plaintiff and defendant.

Record pp. 57 to 58, inclusive.

Plaintiff here introduced an Act of Congress authorizing the sale and purchase of the property and franchise of the defendant and also authorizing the organization of a new corporation and conferring upon it the privilieges of the old.

Record p. 58.

Here was introduced an agreement of counsel with reference to the introduction of evidence.

Record p. 59.

Plaintiff introduced in evidence an Act of the General Council of the Choctaw Nation known as "Non-Citizens Improvements," and also an Act authorizing the principal chief to employ counsel.

Record pp. 59-60.

Defendant introduced in evidence a report of Yancey Lewis, Special Master Commissioner, made to the United States Court for the Central District at South McAlester in the case of Langhorne Wister, et al, vs. The Choctaw Coal & Railway Co., and also notices of sale in said cause of the property and franchises of said company and a decree discharging the receiver. They were introduced in the order named.

Record pp. 61-72 inclusive.

To the introduction of said report, notice of sale and said decree all in the same document, plaintiff objected because of the incompetency, irrelevancy and immateriality of the same, which objection was by the Court overruled, to which action of the court plaintiff excepted.

Record p. 72.

Defendant introduced as evidence an order made in the case of

E. D. Chadick, trustee, vs. The Receivers, and to the introduction of which order plaintiff objected for incompetency, immateriality and irrelevancy, which objection was by the court overruled to which plaintiff excepted, and for the additional reason that plaintiff was neither party nor privy to that suit and could not be affected by it.

Record pp. 72-73, inclusive.

Defendant introduced as evidence a decree of confirmation in case of Langhorne Wister et al, vs. The Choctaw Coal & Railway Co., and to the introduction of which plaintiff objected for the reason that the same was immaterial, irrelevant, incompetent and for the further reason that plaintiff was neither party nor is privy to that suit and can not be affected by it which objection the court overruled, to which plaintiff excepted.

Record p. 74.

Then was there introduced by defendant as evidence a decree in the case of Langhorne Wister et al. vs. The Choctaw Coal & Railway Co., to which plaintiff objected because incompetent, immaterial and irrlevant, which objection the court overruled and plaintiff excepted.

Record pp. 75-01, inclusive.

Defendant introduced as evidence a supplemental report of Yancey Lewis, Sepcial Master in Chancery, in the case of Langhorne Wister, et al, vs. The Choctaw Coal & Railway Co., to which plaintiff objected for irrelevancy, incompetency and immateriality, which the court overruled and the plaintiff excepted.

Record pp. 101-104, inclusive.

Defendant then introduced in evidence a final decree of confirmation of sale in the case of Langhorne Wister, et al, vs. The Choctaw Coal & Railway Co., to which plaintiff objected, which the court overruled and plaintiff excepted.

Record pp. 104-105, inclusive.

Defendant then introduced as evidence the Master's report in the case of Edwin D. Chadick, trustee, vs. The Receivers, the same appearing as ex. A., to defendant's answer, to which plaintiff objected for immateriality, incompetency, irrelevancy, and plaintiff being neither party nor privy to that suit could not be affected by it, which the court overruled and plaintiff excepted.

Record pp. 31 and 105.

Defendant objected to certain parts of the deposition of William Ansley, which the court sustained and plaintiff excepted.

Record p. 50.

This cause came on and was heard on the 29th day of May, 1902 before the Honorable Wm. H. H. Clayton, Judge of the United States Court for the Central District of the Indian Territory, whereupon the judgment or decree of the court was that plaintiff take nothing by this suit and that defendan recover of plaintiff all his costs herein laid out and expended, to which plaintiff excepted and prayed an appeal therefrom to the United States Court of Appeals for the Indian Territory, which appeal was by the Court granted.

Record pp. 105-106.

Then follows in the record the appeal and supersedeas bond and the supersedeas staying all further proceedings until the merits of the appeal are settled, and the decision of the Court of Appeals of the Indian Territory, and judgment.

Record pp. 106-117, inclusive.

Then follows the petition for appeal to the Eighth Circuit, Assignments of Error, appeal bond, supersedeas and decision of the Court of Appeals for the Eighth Circuit and Judgment.

Record pp. 118-133, inclusive.

Then follows petition for appeal to the Supreme Court of the United States, Assignments of Error, Appeal Bond and acceptance of service.

Record pp. 133-145, inclusive.

UPON THE FOREGOING RECORD PLAINTIFF AND APPELLANT ASSIGNS ERROR.

First: That said United States Court for the Central District of the Indian Territory erred as follows: There is error in the U. S. Court in this, that it is adjudged therein, and decreed that Plaintiff take nothing by this suit, and that Francis I. Gowen, Receiver, recover from Plaintiff all his costs herein laid out and expended, the effect of which is to dismiss Plaintiff's suit, whereas said decree should have sustained said action, and rendered the relief sought,

which decree and judgment was excepted to by Appellant.

Second: The Court erred in excluding from the deposition of William Ansley, a witness on behalf of the Plaintiff, the following, towit:

> "And the chief ratified my action as to the sale and payments of said property, and instructed me to proceed at once an demploy attorneys to assist me in getting possession of the property for the purchasers; and I at once employed attorneys to assist the Plaintiff, W. H. Ansley in obtaining possession of the property sold by me as sheriff. Moseley & Smith, attorneys of Denison, Texas, a firm of lawyers; and Cole & Redwine, attorneys at South McAlester, were employed by the Chief of the Choctaw Nation to assist Plaintiff in obtaining possession of said property. In October, 1895, the Choctaw Council passed a special act, appropriating Fifteen Hundred Dollars, ($1,500.00) to employ attorneys to represent the Choctaw Nation and to assist the Plaintiff in obtaining possession of the property aforesaid. In the December, following, contracts employing the aforesaid lawyers, were signed by Jeff Gardner, Chief of the Choctaw Nation, and my action as deputy sheriff aforesaid, as to the sale and payments of the purchase price of the aforesaid property, was ratified and accepted by the Choctaw Nation."

to which ruling of the Court in excluding said evidence, Plaintiff then and there duly excepted.

Third: The Court erred in overruling and disallowing Plaintiff's objection to the introduction in evidence of the report of Yancey Lewis, Special Master Commissioner in the cause of Langhorne Wister, et al, vs. The Choctaw Coal & Railway Co., of July 17th, 1894, and in admitting said report in evidence—to which the Appellant excepted.

Fourth: The Court erred in overruling and disallowing the Plaintiff's objection to the introduction in evidence of a final order or decree, discharging the Receiver in the cause of Langhorne Wister, et al, vs. The Choctaw Coal & Railway Company, which was entered on the 2nd day of March, 1895, in the U. S. Court for the Central District of the Indian Territory at South McAlester, and in admitting said order in evidence, to which action of the Court, Appellant excepted at the time.

Fifth: The Court erred in overruling and disallowing Plaintiff's objection to the introduction in evidence of a decree in the cause of Langhorne Wister, et al, vs. The Choctaw Coal & Railway Company, which was entered on the 17th day of July, 1894, in the U. S. Court for the Central District of the Indian Territory, at South McAlester and in admitting said order or decree in evidence, to which ruling of the Court the Appellant then and there excepted.

Sixth: The Court erred in overruling and disallowing Plaintiff's objection to the introduction in evidence of the supplemental report of Yancey Lewis, Special Master Commissioner, in the cause of Langhorne Wister, et al, vs. The Choctaw Coal & Railway Company, the said report being made to the United States Court for the Central District of the Indian Territory, and in admitting said report in evidence; to the ruling of said Court in admitting said report in evidence the appellant then and there excepted.

Seventh: The Court erred in overruling and disallowing Plaintiff's objection to the introduction in evidence of the final decree in the cause of Langhorne Wister, et al, vs. The Choctaw Coal & Railway Company, which was entered on the 13th day of October, 1894, in the U. S. Court for the Central District of the Indian Territory at South McAlester, and in admitting said final decree in evidence, to which ruling of the Court the Appellant then and there excepted.

Eighth: The Court erred in overruling and disallowing Plaintiff's objection to the introduction in evidence of the report of Yancey Lewis, Master in Chancery, in the cause of Edwin Chadick, Trustee, vs. Receiver of the Choctaw Coal & Railway Company, in the United States Court for the Central District of the Indian Territory, and in admitting said report in evidence over the abjection of said Appellant, to which he then and there excepted.

Ninth: The Court erred in ordering and decreeing that the

to which ruling of the Court in excluding said evidence, Plaintiff then and there duly excepted.

Third: The Court erred in overruling and disallowing Plaintiff's objection to the introduction in evidence of the report of Yancey Lewis, Special Master Commissioner in the cause of Langhorne Wister, et al, vs. The Choctaw Coal & Railway Co., of July 17th, 1894, and in admitting said report in evidence—to which the Appellant excepted.

Fourth: The Court erred in overruling and disallowing the Plaintiff's objection to the introduction in evidence of a final order or decree, discharging the Receiver in the cause of Langhorne Wister, et al, vs. The Choctaw Coal & Railway Company, which was entered on the 2nd day of March, 1895, in the U. S. Court for the Central District of the Indian Territory at South McAlester, and in admitting said order in evidence, to which action of the Court, Appellant excepted at the time.

Fifth: The Court erred in overruling and disallowing Plaintiff's objection to the introduction in evidence of a decree in the cause of Langhorne Wister, et al, vs. The Choctaw Coal & Railway Company, which was entered on the 17th day of July, 1894, in the U. S. Court for the Central District of the Indian Territory, at South McAlester and in admitting said order or decree in evidence, to which ruling of the Court the Appellant then and there excepted.

Sixth: The Court erred in overruling and disallowing Plaintiff's objection to the introduction in evidence of the supplemental report of Yancey Lewis, Special Master Commissioner, in the cause of Langhorne Wister, et al, vs. The Choctaw Coal & Railway Company, the said report being made to the United States Court for the Central District of the Indian Territory, and in admitting said report in evidence; to the ruling of said Court in admitting said report in evidence the appellant then and there excepted.

Seventh: The Court erred in overruling and disallowing Plaintiff's objection to the introduction in evidence of the final decree in the cause of Langhorne Wister, et al, vs. The Choctaw Coal & Railway Company, which was entered on the 13th day of October, 1894, in the U. S. Court for the Central District of the Indian Territory at South McAlester, and in admitting said final decree in evidence, to which ruling of the Court the Appellant then and there excepted.

Eighth: The Court erred in overruling and disallowing Plaintiff's objection to the introduction in evidence of the report of Yancey Lewis, Master in Chancery, in the cause of Edwin Chadick, Trustee, vs. Receiver of the Choctaw Coal & Railway Company, in the United States Court for the Central District of the Indian Territory, and in admitting said report in evidence over the abjection of said Appellant, to which he then and there excepted.

Ninth: The Court erred in ordering and decreeing that the

Plaintiff, W. H. Ansley, take nothing by this suit, and ordering and decreeing that the Defendant, Francis I. Gowen, Receiver, have and recover of, and from, the Plaintiff all his costs laid out and expended, to which ruling of the Court Appellant then and there excepted.

Tenth: The Court erred in dismissing Plaintiff's suit and refusing to grant the relief sought, and in taxing the Plaintiff with the costs in this cause.

Eleventh: That the said United States Court of Appeals in the Indian Territory erred:

I. In not reversing the Judgment of the U. S. Court for the Central District of the Indian Territory, because of each several errors of the latter court as to its action, ruling, judgments and judicial proceedings, and in not rendering judgment in favor of said Appellant according to the prayer of his complaint.

II. The U. S. Court of Appeals in the Indian Territory erred in holding that Section 7, of the treaty of 1855, between the United States Government and the Choctaw and Chickasaw Tribe of Indians did not give said Choctaw tribe of Indians authority to pass laws declaring forfeitures of property built on the public domain of the Choctaw Nation in violation of said treaty and the United States laws, which section reads as follows, towit:

> "So far as may be compatible with the constitution of the United States and the laws made in pursuance thereof,

regulating trading and intercourse with the Indian Tribes, the Choctaws and Chickasaws shall be secured in the unrestricted right of self-government and full jurisdiction over persons and property within their respective limits; excepting however, all persons with their property, who are not by birth, adoption or otherwise, citizens or members of either the Choctaw or Chickasaw tribe, and all persons not being citizens or members of either tribe found within their limits, shall be considered intruders, and be removed from, and kept out of the same, by the United States Agent, assisted, if necessary, by the military, with the following exceptions, viz: Such individuals as are now, or may be, in the employment of the Government and their families, those peacefully traveling or sojourning in the country or trading therein under license from the proper authority of the United States; and such as may be permitted by the Choctaws or Chickasaws, with the assent of the United States Agent, to reside within their limits, without becoming citizens of members of either of said tribes.

III. The United States Court of [illegible]als in the Indian Territory erred in holding that article 43 of the treaty of 1866, between the United States Government and the Choctaw and Chickasaw Tribe of Indians, did not give said tribe of Indians authority to enact and pass laws regulating the forfeiture of non-citizens' improvements built on the public domain of the Choctaw and Chicka-

saw Nation, in violation of Section 7, of the treaty of 1855, between the United States Government and the Choctaw and Chickasaw tribe of Indians, and in violation of article 43 aforesaid, of the treaty of 1866, between the Choctaw and Chickasaw tribe of Indians and the United States Government, and in violation of the Acts of Congress. Article 43 of the Treaty of 1866 aforesaid reads as follows.

> "The United States promises and agrees that no white person except officers, agents and employees of the Government, and any internal improvement company or persons traveling through or temporarily sojourning in, the said nations, unless formally incorporated and naturalized by the joint action of the authorities of both nations into one of the said Nations of Choctaw and Chickasaws, according to their laws, customs or usages; but this article is not to be construed to affect parties heretofore adopted, or to prevent the employment temporarily of white persons who are teachers, mechanics or skilled in agriculture, or to prevent the legislative authorities of the respective nations from authorizing such works of internal improvements as they may deem essential to the welfare and prosperity of the community, or to be taken to interfere with, or invalidate any action which has heretofore been had in this connection by either of the said nations."

IV. The United States Court in the Indian Territory erred in

holding that there was no provision in any treaty made by and between the Choctaw and Chickasaw tribe of Indians and the United States Government, wherein said Choctaw and Chickasaw tribe of Indians has the authority to enact any legislation that shall affect or control non-citizens' improvements built upon the public domain of the Choctawm Nation in violation of the acts of Congress and the treaties between the United States Government and the Choctaw and Chickasaw tribe of Indians.

V. The U. S. Court of Appeals in the Indian Territory erred in holding that the act of the Choctaw Council, known as "Claims and Improvements," did not give the Choctaw Nation and its Sheriffs thereof, the right to advertise and sell improvements built upon the public domain of the Choctaw Nation by non-citizens thereof in violation of the treaties between the U. S. Government and the Choctaw and Chickasaw tribe of Indians and the various acts of Congress, Section 2, of said Act, known as "Claims and Improvements," under which the property in question was sold, reads as follows:

> "Section 3, Article 1. Be it enacted by the General Council of the Choctaw Nation Assembled: All non-citizens not in the employ of a citizen of the Choctaw Nation, under the provisions of existing treaty stipulations, who have made or bought improvements in said Nation, are hereby notified that they are allowed to sell their so-called improvements to citizens, and if such non-citizens fail to comply with this section, then it shall be the duty of the

sheriffs of the Counties in which such improvements may be located to advertise the same for sale in thirty days, and sell the same at the appointed time to the highest Choctaw citizen bidder for cash, one half of which shall be paid into their respective treasuries and the other half into the National Treasury, provided however, that if any such non-citizen shall fail or refuse to deliver possession of such an improvement, he shall be reported by the Sheriff of that county to the Principal Chief, and by said Chief to the U. S. Indian Aegent to take proper steps for the removal and prosecution of such offender, under Section 2118, of the Revised Statutes of the United States; provided further, that a notice of sale shall be posted by the Sheriff in three public places in the county, which shall be legal notice to persons against whom the law operates."

VI. The United States Court of Appeals in the Indian Territory erred in holding that the Act of the Choctaw Council known as "Claims and Improvements," was unconstitutional and null and void.

VII. The United States Court in the Indian Territory erred in holding that the property in controversy was not forfeited to the Choctaw Nation when the same was built upon the public domain of the Choctaw Nation and off of the right of way of the Choctaw Coal & Railway Company, and in violation of the treaties between the United States Government and the Choctaw and Chickasaw tribe of

Indians and in violation of various acts of Congress and more especially in violation of Section 10, of the Acts of Congress, granting the Choctaw Coal and Railway Company a right of way through the Choctaw Nation, which said Section 10 reads as follows:

> "That the said Choctaw Coal & Railway Company shall accept this right of way upon the express condition, binding upon itself, its successors and assigns, that they will neither do, advise or assist in any efforts looking towards the change or extinguishment of the present tenure of the Indian in their lands, and will not attempt to secure from the Indians any further grant of land or its occupancy than is hereinbefore provided; provided, that any violation of the conditions mentioned in this section shall operate as a forfeiture of all the rights and privileges of said Railway Company under this act."

VIII. The United States Court of Appeals in the Indian Territory erred in holding that the action of Francis I. Gowen, as Receiver of the Choctaw Coal & Railway Company was improperly brought, and in not holding that he was a proper party in this action

IX. The U. S. Court of Appeals in the Indian Territory erred in holding the objections raised by Appellees in the Court of Appeals in the Indian Territory for the first time, that Francis I. Gowen, Receiver, was an improper party to said action, did not come too late—the objection not being rasied in the U. S. Court for

the Central District of the Indian Territory.

X. The United States Court of Appeals for the Indian Territory erred in affirming the judgment of the United States Court for the Central District of the Indian Territory, and in not reversing the Judgment of the United States Court for the Central District of the Indian Territory, and in not entering a Judgment for the Appellant and granting the relief prayed for in his Pleadings.

XI. The United States Circuit Court of Appeals for the Eighth Circuit erred:

I. Said United States Circuit Court of Appeals erred in not reversing the Judgment of the United States Court of Appeals for the Indian Territory; and the United States Court for the Cstral District of the Indian Territory; because of each of the several errors of each of the aforesaid Courts in the Actions, Rulings, Judgments and Judicial proceedings, and in not rendering judgment in favor of said Appellant, according to the prayer of his Complaint.

II. Said United States Court of Appeals for the Eighth Circuit erred in holding that the sale made by the Sheriff, of the property in controversy, to the purchasers thereof, was null and void, and did not convey title.

III. Said United States Circuit Court of Appeals for the Eighth Circuit erred in halding that the purchasers of the property

in controversy, by reason of the terms of sale made by said Indian sheriff did not acquire any interest or right in said property.

IV. Said United United States Circuit Court of Appeals for the Eighth Circuit erred in holding that the property in controversy was not forfeited to the Choctaw Nation, and in further holding that said Choctaw Nation did not have authority to sell and convey said forfeited property, according to the customs and constructions placed upon said Indian statute, under which said sale was made.

V. Said United States Circuit Court of Appeals for the Eighth Circuit erred in affirming the Judgment of the United States Court of Appeals for the Indian Territory, when in fact, the grounds which the decision of said United States Circuit Court of Appeals for the Eighth Circuit, based its opinion, were never decided by said United States Court of Appeals for the Indian Territory, said United States Court of Appeals for the Indian Territory having decided said action upon a different proposition of law and ground than the one decided by the United States Circuit Court of Appeals for the Eighth Circuit.

VI. The United States Circuit Court of Appeals for the Eighth Circuit erred in holding that it was not necessary to consider whether the Appellees were intruders in the Choctaw Nation, and holding the improvements in violation of law, and that if they were, Appellant had no right to disturb them.

VII. The United States Circuit Court of Appeals for the

Eighth Circuit erred in holding that the duty of enforcing the Choctaw laws in regard to the property in controversy, was not within the jurisdiction of said Court.

VIII. The United States Circuit Court of Appeals for the Eighth Circuit erred in affirming the Judgment of the United States Court of Appeals for the Indian Territory and the United States Court for the Central District of the Indian Territory, and in not reversing the Judgments of the United States Court of Appeals for the Indian Territory and the United States Court for the Central District of the Indian Territory, and in not entering a Judgment for Appellants and granting the relief prayed for in his pleadings.

ARGUMENT.

The Assignment of Error 1, of the United States Court for the Central District of the Indian Territory and Errors 1 and 7, in the United States Court of Appeals for the Indian Territory, and Errors 1 and 2, in the United States Circuit Court of Appeals for the Eighth Circuit will be considered and argued together.

First Assignment of Error, towit:

The United States Court for the Central District of the Indian Territory erred as follows: There is error in the decre eof the United States Court in this: That it is therein adjudged and decreed that Plaintiff take nothing by this suit and that Francis I. Gowen, Receiver, recover from Plaintiff all his costs herein laid out and expended, the effect of which is to dismiss said suit. Whereas,

said decree should have sustained said action, and rendered the relief sought; which decree and judgment were excepted to by Appellant. Record p. 136.

ERRORS ASSIGNED IN THE UNITED STATES COURT OF APPEALS FOR THE INDIAN TERRITORY.

First Error: Said United States Court of Appeals for the Indian Territory erred in not reversing the Judgment of the United States Court for the Central District of the Indian Territory, and in not endering Judgment in favor of said Appellant according to the prayer of his complaint. 'Record p. 137.

Seventh Error; of the said United States Court of Appeals for the Indian Territory: Said United States Court of Appeals for the Indian Territory erred in houlding that the property in controversy was not forfeited to the Choctaw Nation when the same was built upon the public domain of the Choctaw Nation, and off of the right of way of the Choctaw Coal & Railway Co., and in violation of the treaties between the United States Government and the Choctaw and Chickasaw Tribe of Indians, and in violation of the various Acts of Congrehs, and more especially in violation of Section 10, of the Act of Congress, granting the Choctaw Coal & Railway Co., a right of way through the Choctaw Nation, which said Section 10, reads as follows:

"That said Choctaw Coal & Railway Co., shall accept this right of way upon the express condition binding

upon itself, its successors and assigns, that they will neither do, advise or assist in any manner efforts looking towards the changes or extinguishing of the present tenure of the Indians in their lands, and will not attempt to secure from the Indians any other grant of land or its ocupancy than is herein provided; provided, that any violation of the conditions mentioned i nthis section shall operate as a forfeiture of all rights and privileges of said Railway Company in this Act. pp. 114-139."

ERRORS ASSIGNED IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

First Error: Said United States Circuit Court of Appeals for the Eighth Circuit erred in not reversing the Judgment of the United States Court of Appeals for the Indian Territory and the United States Court for the Central District of the Indian Territory, and in not rendering Judgment in favor of said Appellant, according to the prayer of his Complaint.

Error Two: Said United States Circuit Court o fAppeals for the Eighth Circuit erred in holding that the sale made by the Sheriff of the property in controversy to the purchasers thereof, was null and void, and did not conevy any title.

Record pp. 131-140.

The sole question in this case is: Was the property in controversy forfeited to the Choctaw Nation? If so, the Action of Appellant must prevail. If the property was not forfeited to the Choc-

taw Nation and Appellee had a vested right in said property, then Appellant must fail. This question has not been passed upon by either of the courts heretofore rendering decisions in this case.

It might be well to state the power and authority the Choctaw Nation has in making laws and enforcing the same.

In the treaty of September 27th, 1830, by the Commissioners for the United States and Mingoes Chiefs, etc., for the Choctaw Nation, the United States sold and conveyed to the Choctaw Nation the land now occupied by them, and executed a patent therefor. Said Choctaw tribe of Indians was given full power and authority to organize and establish a government, and in pursuance of said authority, have established a well organized constitutional Government secured to them by treaties and Acts of Congress, with an elective Executive head; with Jegislative and Judiciary system with Superior and Inferior Courts. It is however, essentially a Government of her own creation and rests for its very being upon the authority granted by the United States. Not a sovereign to be true as the United States or the several States are sovereign; but a distinct political society; a dependent political community, and one so completely under the sovereignty and dominion of the United States, that any attempt by a foreign nation to acquire its lands or to form diplomatic action with it, would be considered an invasion of her Territory and an act of hostility.

Cherokee Nation v. Southern Kansas R. Co., 135 U.S.641.
Talton v. Mayes 163 U. S. 376.

Stephens v. Cherokee Nation, 43 U. S. 1055.

The treaties and laws of the United States contemplate the Indian country as completely separated from the states, and the Choctaw Nation as a distinct community; that i nthe executive, legislative and judicialnc branches of our government we have admitted by the most solemn sanction the existence of the Indians as a separate and distinct people and as being vested with rights which constitute them a state or separate people.

Worcester v. Georgia, 6 Pet. U. S., 515 13 C. C. A., p. 519
Stephens v. Cherokee Nation, 43 U. S. (La. Ed.) 1055.

The tribes have always been regarded as having a semi-independent position when they preserve their tribal relations, not as possessed of the full attributes of sovereignty, but as a separate people, with power of regulating their internal affairs and social relations, and thus far not brought under the laws of the Union or of the state within whose limits they reside.

U. S. v. Kegana, 30, U. S. 228.
Stephens v. The Cherokee Nation, 43 U. S. 1056.

The Choctaw Nation under the terms of the constitution was capable of entering into treaty relations between the United States, and the proceedings and judgments of its courts in cases within its jurisdiction stand on the same footing and are entitled to the same faith and credit as those of the Territories of the Union.

Keokuk v. Ulam, 4 Okla., 5.

Cherokee Nation v. Journeycake, 155, U. S., 196.

Talton v. Mayes, 163 U. S., 376.

Cherokee Nation v. Southern Kan. R. Co. 135 U.S.641.

Raymond v. Raymond, 83 Fed. Rep. 721.

Mehlin v. Ice, 56 Fed. Rep. 12.

Although in certain respects the Indian tribes regarded as possessing the attributes of nationality, they are considered not as foreign, but as domestic, dependent nations.

Cherokee Nation v. Georgia, 5 Pet. U. S. 1.

Since the Choctaw tribe of Indians established their government under the treaty of September 27, 1830, between the United States and the Choctaw tribe of Indians, the political Departments of the United States Government, by treaties, by Acts of Congress and by Executive action, have always recognized the Choctaw Nation as a State and a distinct political society, separate from others, and capable of managing its own affairs and governing itself, and the Courts are bound by these Acts of the political Dpartments of the Government.

Thebo v. Choctaw Tribe of Indians, 13, C. C. A. p. 519.

Nethlin et al v. Ice, 5, C. C. A. p. 403.

Cornell's Judges et al, vs. Shannon et al, 11 C. C. A. p. 465.

U. S. Beny. 2 McCrary, U. S. 58.

Earl v. Godley, 42 Minn. 361.

Fisher v. Allen, 2 How. (Miss.) 611.
Johnson v. Johnson, 30 Mo. 72, 77, Am. Dec. 598.
Boyer v. Dively, 58 Mo. 510.
La Riviena v. La Riviena, 77 Mo. 512, 97 Mo. 80.

Congress by Act of June 10, 1896, directed that the Commission to the Five Civilized Tribes, in dealing with the affairs of the Indians, have respect for their laws and customs. Treaties made by the United States with the Choctaw Nation are laws of the United States and constitute a part of the supreme laws of the land of which the Courts must take judicial notice. They are to be construed liberally in favor of the Indians, and an Act of the State Legislature in conflict with them is void.

Woster v. Georgia, 6 Pet. United States 515.
Morgan v. McGee, 15 Hum. (Tenn.) 13.
U. S. v. Payne, 2 McCrary, U. S. 289.
In Re Race Horse 70 Fed. Rep. 598.
Uhlig v. Harrison 2 Dak. 71.
State v. Harold, 9 Kan. 194.
Love v. Hamlin, 21 Fed. Rep. 755.
Choctaw Nation v. U. S. 119 U. S.1.
Uaa-pe-Mangua v. Aldrich, 28 Fed. Rep. 489.

After the ratification of the aforesaid treaty of 1830 and in the year 1837, the Chickasaw Tribe of Indians bought an interest in the Choctaw Nation from said tribe of Choctaw Indians.

II Vol. "Laws and Treaties," p. 361.

Thereafter, and in the year 1855, the Choctaw and Chickasaw tribes of Indians, by treaties with the United States Government, were secured in the unrestricted right of self government of their own affairs, so long as the same was not inconsistent with the constitution, treaties and laws of the United States.

Vol. II, "Laws and Treaties." p. 533, Art. VII, reads as follows:

> "So far as may be compatible with the Constitution of the United States and the laws made in pursuance thereof, regulating trade and intercourse with the Indian Tribes, the Choctaws and Chickasaws shall be secured in the unrestricted right of self-government, and full jurisdiction over persons and property within their respective limits; excepting however, all persons with their property, who are not by birth, adoption, or otherwise citizens or members of either the Choctaw or Chickasaw Tribe, and all persons not being citizens or members of either tribe, found within their limits shall be considered intruders, and be removed from and kept out of the same by the United States Agent, assisted, if necessary, by the military, with the following exceptions, viz: Such individuals as are now, or may be in the employment of the Government, and their families; those peacefully traveling or temporarily sojourning in the country or trading therein under license from the proper authority of the United States, and such as may be per-

mitted by the Choctaws and Chickasaws, with the assent of the United States Agent, to reside within their limits, without being citizens or members of either of said tribes.

Under and by virtue of the treaties of 1830 and 1855, as aforesaid, the Choctaw Nation was given full power and authority to organize and establish a government of its own with legislative, judicial and executive departments.

Article 14 of said Treaty of 1855 provides as follows:

"The United States shall protect the Choctaws and Chickasaws from domestic strife, from hostile invasions and from agressions from other Indians and white persons not subject to their jurisdiction and laws."

Article 8 and Section 4 of the treaty of 1866 between the United States Government and the Choctaw and Chickasaw Indians provides as follows:

"The general council of the Choctaw Nation shall have power to legislate upon all subjects and matters pertaining to the intercourse and relations of the Indian tribes and Nation resident in the Indian Territory: the arrest and extradition of criminals escaping from one tribe to another: the adminstration of justice between members of the several tribes of said Territory, and persons other than Indians and members of said tribes, or Nation, etc."

Having considered the power and authority given the Choctaw Nation by Treaties, stipulations and Acts of Congress, we will now consider the main question in issue in this case as heretofore stated; Was the property in question forfeited to the Choctaw Nation by Appellees by reason of the same being built upon the public domain of the Choctaw Nation, off of the right of way of the Choctaw Coal & Railway Co., and in violation of the Act of Congress granting said Choctaw Coal & Railway Co., a right of way, and in violation of the treaties between the United States and the Choctaw tribe of Indians heretofore referred to, and in violation of the laws of the Choctaw Nation?

It is claimed in this action by Appellant that the property in controversy was forfeited to the Choctaw Nation before the sale thereof by said Indian sheriff, and that when the sale was made by the Indian sheriff, to a citizen of the Choctaw Nation, under the laws of the Choctaw Nation, that said property was sold as the property of the Choctaw Nation, and not as the property of the Choctaw Coal & Railway Co., or a non-citizen for the reason that said Choctaw Coal & Railway Co., had forfeited all rights to said property, and the title thereto had become vested absolutely and completely in the Choctaw Nation, and said Choctaw Nation had a right to sell said property to one of its citizens and execute a deed therefor; and said Choctaw Nation through its officers, sold the property in controversy and executed a deed therefor, upon which Appellant claims title.

Record pp. 20-24 inclusive.

To get a full and complete understanding of this question and

whether or not, the property in question was forfeited to the Choctaw Nation, it is necessary to refer to the Legislation of the Choctaw Nation, and to Act of Congress on this subject. Prior to the year 1888, an Act was passed by the General Council of the Choctaw Nation, entitled "Non-Citizens' Improvements," which reads as follows:

> "Be it enacted by the general council of the Choctaw Nation Assembled: All non-citizens not in the employ of a citizen of the Choctaw Nation, and not authorized to live in the Choctaw Nation under th eprovisions of existing treaty stipulations, who have made or bought improvements in said nation are hereby notified that they are allowed to sell their so-called improvements to citizens, and if such non-citizens fail to comply with this section then it shall be the duty of the sheriffs of the counties in which such improvements may be located to advertise the same for sale in thirty days; and sell the same at the appointed time to the highest Choctaw citizen bidder for cash; one-half which shall be paid into their respective treasuries, and the other half into the national treasury, provided, however, that if any such non-citizen fail or refuse to deliver the possession of such an improvement he shall be reported by the sheriff of that county to the principal chief, and by said chief to the United States Indian Agent to take the proper steps for the removal and prosecution of such offender under Section 2118, of the Revised Statutes of the United

States; provided further, that a notice of sale shall be posted by the sheriff in three public places in his county, which shall be legal notice to all persons against whom this law may operate.

"2. Any citizen who shall attempt to protect or screen any non-citizen under the pretense of ownership or any other false pretence, from the operation of the preceding paragraph to defeat the same, he shall incur a penalty of not less than one hundred dollars nor more than two hundred and fifty dollars to be recovered by action in the Circuit Court for the district in which the improvement is located; the amount of such penalyt to be determined by the Circuit Judge of said court; and it shall be the duty of the circuit judges of this nation at each term of their respective courts, to call attention of the grand juries to the provisions of this section, and instruct them to indict all persons violating this section."

Record p. 60.

On the 18th day of February, 1888, Congress passed an Act granting to the Choctaw Coal & Railway Co., the Choctaw Nation having ceded this right to the United States by treaty, a right of way through the Indian Territory and the Choctaw Nation which is as follows:

"That said corporation is authorized to take and use for all purposes of railway and for no other purpose, a

right of way 100 feet in width through said Indian Territory for said main line and branch of the Choctaw Coal & & Railway Co., and to take and use a strip of land 200 feet in width with the length of 3000 feet in addition to the right of way for stations for every ten miles of road, with the right to use such additional ground where, from heavy cuts and fills as may be necessary for the construction and maintainance of the road bed not exceeding 100 feet in width on each side of said right of way, or so much thereof as may be included in said cut or fill; provided, that no more than said addition of land shall be taken for any one station; provided no part of the lands herein authorized to be taken shall be leased or sold by the company, and they shall not be used for any purpose but for the convenient operation of said road, telegraph and telephone lines, and when any part thereof shall cease to be used, such portion shall revert to the nation or tribe of Indians from which the same shall be taken.

"Section 10. That the said Choctaw Coal & Railway Co., shall accept this right of way upon the expressed condition binding upon itself, its successors and assigns, that they will neither aid, advise, nor assist in any efforts looking toward the changing or extinguishing o fthe present tenure of the Indians in their land, and will not attempt to secure from the Indians any further grant of land, or its occupancy, than is hereinbefore provided. Provided: that any violation of the conditions mentioned in this section

shall operate as a forfeiture of all the rights and privileges of said railway company under this Act."

Record p. 12.

After the Choctaw Coal and Railway Co., had bee ngranted a charter by the Act of Congress aforesaid it proceeded to build its line through the Choctaw Nation, and in the year 1889 and 1890 said Railway Co., undertook to lay off a town where South McAlester is now located, and commenced the erection of buildings off of its right of way on the public domain of the Choctaw Nation. The Choctaw Natiaon feeling agrieved by the invasion and usurpation of its public domain, and well knowing that its rights were being taken by said Choctaw Coal & Railway Co., by reason of said Choctaw Coal & Railwaly Co., violating the Act of Congress that granted its right of way, dealing in townsites and building off of its right of way in South McAlester, said Choctaw Nation in order to protect its rights passed an act at its regular Council, November 14th, 1890, notifying said Choctaw Coal & Railway Co., to cease building off of its right of way, and to file within 60 days evidence with the National Agent of the Choctaw Nation, that it was not connected with the townsite syn- Choctaw Council, was filed with the active officers of the Railway Co. said acts of the Choctaw Council reads as follows:

"Sec. 2. Be it further enacted, that the National Agent is hereby instructed to demand of the officials of the Choctaw Coal & Railway Co., that they file within sixty days evidence that they are not connected, directly or indi-

rectly, with the townsite syndicates; also a copy shall be filed with the principal Chief. If they fail to file such evidence, the National Agent shall declare their coal leases void and so notify them.

Sec. 3. Be it further enacted, that the leases for thirty years are hereby declared to be illegal and null and viod.

Sec. 4. Be it further enacted that the sheriff of each County is hereby instructed to at once diligently inquire into all such illegal leases and report the same to the Principal Chief, and that he cause any improvement erected by non-citizens, corporate or individual, by virtue of said illegal leases, to be advertised for sale in the manner provided by law.

Sec. 5. Be it further enacted, that the Principal Chief is hereby authorized to employ competent counsel to represent the interests of the Nation before the United States Courts, and the sum of $2000 is hereby appropriated out of any money in the Treasury not otherwise appropriated, for the payment of said attorneys. Said amount to be drawn by the principal Chief on his own certificate and disbursed, as to him seems best, and the remainder, if any, to be paid into the National Treasury. All records in such cases to be filed in the office of the National Secretary.

Sec. 6. Be it further enacted, that a copy of this cat be forwarded to the President and Treasurer of said Choctaw Coal & Railway Co., by the National Secretary, and

that this act shall take effect and be in force from and after its passage.

Approved Nov. 14, 1890.

W. N. JONES,
P. C. C. N."

After the aforesaid Act had been served upon the officers of the Choctaw Coal & Railway Co., the said Choctaw Coal & Railway Company, in defiance of said Act, continued to build houses off of its right of way on the public domain of the Choctaw Nation.

Thereafter, and about the year 1893, said Choctaw Coal & Railway Company became financially embarrassed and a Receiver was appointed to take charge of the property of said company, and while said property was in the hands of said Receiver an Act was passed by Congress, and approved August 24th, 1894, which Act authorizes the purchasers of the property and franchises of the Choctaw Coal & Railway Co., to organize a corporation and to confer upon the same all the powers, privileges and franchises vested in the old Company.

Congress being advised by the authorities of the Choctaw Nation that said Choctaw Coal & Railway Co., had violated the Act of Congress permitting it to do business in the Indian Territory, and had taken possession of the public domain of said Nation against the protest of the Choctaw Indians, and Congress realizing that the improvements and houses built on the public domain of the Choctaw Nation off of its right of way, had become forfeited to said Nation,

so stipulated in Sec. 1, of the Act above referred to, that said new corporation when so organized should not have the right to acquire and hold any houses and buildings at South McAlester situate off of the right of way and depot grounds of said Choctaw Coal & Railway Company.

Section 1, of said Act reads as follows:

> "Be it enacted by the senate and house or representatives of the United States of America in Congress assembled, that the purchasers of the rights of way, railroads, mins, coal leasehold estates, and other property, and the franchises of the Choctaw Coal & Railway Company, at any sale made under or by virtue of any process or decree of any court having jurisditcion thereof, shall be, and are hereby constituted a corporation, and shall be vested with all of the right, title, interest, property possession, claim, and demand in law and equity, of, in, and to such rights of way, railroads, mines, coal leasehold estates, and property of the said Choctaw Coal & Railway Company, and with all the rights, powers, immunities privileges and franchises which have been heretofore granted to or conferred upon said company by any act or acts of congress, or which it passessed by virtue of its charter under the laws of Minnesota; provided that such new corporation shall not have the right to acquire and hold any houses or buildings at South McAlester situate off of the right of way and depot grounds said Choctaw Coal & Railway Company."

By reading the aforesaid Act of Congress, it is clearly set forth that said new Company shall acquire all the rights, franchises and interests of the Choctaw Coal & Railway Company and said Act expressly provides that said new Company shall not acquire any interest in houses in South McAlester situate off of the right of way of the Choctaw Coal & Railway Co. Thus Congress clearly set forth by solemn Act, that said Choctaw Coal & Railway Company had forfeited to the Choctaw Nation the improvements situate off of the right of way in South McAlester, and the evidence shows in this case that said property in controversy was never treated as an asset of said Company; was never in the hands of the Receiver; was never sold by the Receiver of said Company and no account of said improvements was ever made in any way whatever. However, said Choctaw Coal & Railway Company, through J. W. McCloud, Trustee, and Attorney for said Company, held possession of said improvements; occupied and leased the same, and in the year 1895, while said improvements were in possession of the Choctaw Coal & Railway Company, the principal Chief of the Choctaw Nation, in pursuance of the Acts of the General Council of tthe Choctaw Nation, and the laws and customs, and the public policy of said Nation as manifested by history, traditions and intercours of said Nation with other people and communities, directed the sheriff of Tobucksey County, Choctaw Nation, to advertise and sell the aforesaid improvements to a citizen of the Choctaw Nation. On the 24th day of June, 1895, said Indian Sheriff proceeded to sell as forfeited to the Choctaw Nation, all the improvements herein mentioned, to the highest Choctaw citizen bidder, at which sale William H. Ansley, James Pusley and

E. T. Richards, all Choctaw citizen bidders, became the purchasers, and deeds were made to them according to the laws of the Choctaw Nation. Subsequently Pusley and Richards conveyed their interest to the Plaintiff.

Rec. pp. 20-24, inclusive. Rec. pp. 49-50.

The improvements in controversy were built off of the right of way of the Choctaw Coal & Railway Company from about the year 1889 to 1891, inclusive.

Dep. Chadick, Rec. pp. 36-44, inclusive.
Dep. C. S. Jones, Rec. pp. 45-46.
Dep. Fritz Sittel, Rec. pp. 47-48.
Dep. Wm. Ansley, Rec. pp. 49-50.

That after the sale of the aforesaid property, on the 24th day of June, 1895, by said Sheriff of Tobucksey County, Choctaw Nation said Wm. Ansley, deputy sheriff, reported his action as to the sale and payment of said property, to the principal Chief of the Choctaw Nation, who accepted and confirmed all of his acts as to the sale and payment of said property, and thereater, when the Choctaw Council convened in October the same year, towit: 1895, the principal Chief transmitted said report of said Deputy Sheriff to the Choctaw Council as to the sale and payment of said property, and all his other acts of said Deputy sheriff were accepted and confirmed by the Choctaw Council, and on the 30th of October, 1895, while Council was still in session, said Choctaw Council passed an Act authorizing said principal Chief of the Choctaw Nation to employ attorneys to

represent the Choctaw Nation in assisting said Plaintiff in obtaining possession of said property, and thus accepting, ratifying and confirming, each and every act o William Ansley, as deputy sheriff, as to tthe sale and payment of said property and said principal Chief at once employed attorneys to represent the Nation and to assist the plaintiff to obtain possession of said property.

Dep. Wm. Ansley, Rec. p. 50.

In October in the year 1895, after the sale of the aforesaid property by said deputy sheriff, in June 1895, as aforesaid, Council passed an act appropriating money to assist the Plaintff to obtain possession of the aforesaid property and to carry out the orders of the Chief and the sale of the property made by the deputy sheirff as aforesaid. Which Act reads as follows, towit:

"Bill No. 27. An Act authorizing the principal Chief to employ Counsel:

Section 1. Be it enacted by the Genreal Council of the Choctaw Nation assembled: That the sum of Two Thousand Dollars ($2,000.00) is hereby appropriated out of any money in the Nation Treasury not otherwise appropriated, and said sum to be placed to the credit of the principal Chief and to be by him used for and in behalf of the Choctaw Nfation, in the employing of able and competent counsel to defend the interest of this nation in all suits now pending or that may hereafter come before the United States courts in any manner relative to the full and

complete execution of the laws of the Choctaw Nation by the Sheriffs of each and every county in the confiscation of property, of property of non-citizens who are now occupying lands or buildings or who may hereafter occupy, not in conformity to the laws of the Choctaw Nation.

Sec. 2. Be it further enacted: That the principal Chief be, and he is hereby, required to make a full and complete report, showing the expenditures of the aforesaid amount of money.

Sec. 3. Be it further enacted, that all acts coming in conflict with this act are hereby repealed, and that this act take effect from and after its passage.

Approved October 30, 1895.

JEFF GARDNER, P. C. C. N."

But to the contention of Appellant, that the property in controversy was forfeited to the Choctaw Nation and that plaintiff secured a good title to the same by reason of the purchase thereof the Defendant makes answer and says: That when Chadick obtained a Trust Deed from Sittel and his wife for a pretended loan of money on the aforesaid property, that said Chadick entered into an agreement, not as Manager of said Company, but personally with Sittels and that Defendant had no knowledge that its funds were being used in the erection of the buildings aforesaid for an unlawful purpose, and that said Defendant became entitled to an equity in the buildings erected off of its right of way with its money, and was entitled to hold and occupy the same for the purpose of reimbursing itself and the

Court is asked to impress the property with this equity. Before this could be done, if at all, it must be shown that there was no bad faith on the part of the Defendant, and no willful intention to gain possession of the Indian lands or violate its charter or the law. This said Defendants have failed to show, for Chadick was their general manager and had full control of all the affairs of the Defendant in the Indian Territory; that he has stated upon oath, to which there is no denial, that he was acting in behalf, and in the interest of the Choctaw Coal & Railway Company, whose money he invested when he made the improvements, and that the trust deed was executed for the purpose of enabling Defendant to build houses off of its right of way in the town of South McAlester, and further in securing the occupancy of the land on which said houses were built, and he says that the Defendant had full knowledge of this expenditure, and that in fact, an account was opened on the books of the Defendant as a townsite account, and the President, Vice-President, Treasurer and other members of the Board of Directors visited South McAlester during the progress of the construction and saw the work going on, and the buildings, and knew the fact, and that the houses were not undertaken to be built off of the right of way of the Company until the facts had been talked over with the active officers of said company, and it was then agreed that the houses in controversy should be built by said company, with its money, off of the right of way, and Chadick in building said houses was carrying out the instructions of the officers of the Company.

Dep. Chadick Rec. pp. 36-44.

Dep. C. S. Jones, Rec. pp. 45-46.

This trust deed executed by Sittels of the Choctaw Coal and Railway Co., bears a stamp of double dealing; of bad faith. It was executed for the express purpose of evading the laws of the United States and of the Choctaw Nation, and in procuring its execution the Defendant made a criminal of Sittel and subjected him to the pains and the penalties of the Choctaw Courts.

Sittel does not now claim, nor did he ever claim said improvements or any interest therein, and recognizes the fact that upon entering into said conspiracy with Chadick, who was acting for the Defendant, he lost all right to control any part of the land, and that the right of the Choctaw Nation to re-enter and sell said improvements was complete.

The Defendant could not be permitted to do indirectly, what it could not do directly; it could not lawfully occupy these lands and make the improvements. Said act could not be legalized by conspiring with Sittel to subvert and circumvent the laws of the Choctaw Nation in fraud of the rights of the Choctaw people.

Dep. Chadick, Rec. pp. 36-44.
Dep. Fritz Sittel, Rec. p. 51.

The Supreme Court of the United States in a case similar to the one at bar, speaking through the eminent Jurist, Mr. Justice Harlan, said:

"A corporation that has violated a public statute in obtaining public lands can be required to surrender them be-

fore it has been reimbursed the amount expended by it in procuring the legal title.

"The controlling object of this and similar suits is to enforce a public statute against those who have violated its provisions. The Defendant is a wrong doer against whom the government seeks to vindicate its policy in reference to the development of its vacant coal lands.

"Congress when establishing that policy was not bound to assume that individuals or associations of inidviduals would attempt to defeat it by means of fraudulent schemes or otherwise.

"The proposition that the Defendant having violated a public statute in obtaining lands that were dedicated to other purposes, can not be required to surrender them until it has been reimbursed the amount expended by it in procuring legal title is not within the reason of the ordinary rule, that one who seeks equity must do equity, if sustained would interfere with the prompt and efficient administration of the public domain. Let the wrong doer first restore what it confesses to have obtained from the government by means of a fraudulent scheme formed by its officers, stockholders and employees in violation of law."

United States v. Trinidad Coal and Cokeing Co., 137 U. S. 640-44.

The facts in the aforesaid case show that the Trinidad Coal Co.,

having entered its quantom of the land, 320 acres, conspierd with six of its employes so that each of them entered the quantom prescribed for individuals, which was 160 acres each, and for which the Trinidad Coal Co., paid, and patents were issued severally to each employee, who subsequently conveyed by warranty deed to the Company.

The court held that this was a fraud practiced against the United States government for which the patent could be cancelled without the money being refunded which had been paid. The case at bar is much stronger than this one, for the reason that the Choctaw Coal & Coke Co., had violated the act of congress that gave it existence: had violated the treaties between the United States and the Choctaw Nation and had violated an act of the Choctaw Nation. It conspired with Sittel to practice a fraud upon the Choctaw Nation and to obtain possession of the public domain, which it kne wcould not be done, and therefore the trust deed must be considered null and void, and without any force or effect, and the case stands as though no trust deed had ever been executed, and the sole question as stated before: was the property forfeited to the Choctaw Nation when built upon the public domain?

Defendants say that said sale by said Indian sheriff was made and the pretended forfeiture declared thereby, without any hearing in favor of these Defendants, and without giving them an opportunity to assert any defense, and that said Indian sheriff officially declared

that these Defendants were intruders as to the premises aforesaid, and unlawfully holding the premises in question for that reason without giving these Defendants any opportunity in any Court or place, of showing that said official declaration on the part of the Indian sheriff was false.

To this Plaintiffs make reply: That when said Defendant committed the act of violating the Act of Congress that gave it existence in the Indian Territory, and when it violated the solemn treaties between the Choctaw Nation and the United States governmem said property became forfeited to the Choctaw Nation by operations of the statute, and it was not necessary for Defendant to have a judicial hearing in court, as Defendant by its own acts, and by the operations of law, lost all right to said property when it was built upon the public domain of the Choctaw Nation; and when the Indian sheriff sold said property, he sold it as the property of the Choctaw Nation. Defendants overlook the fact that there is a distinction between common law, and statutory forfeitures. A common law forfeiture is declared and wrought out by the judicial department, while statutory forfeitures are declared and enforced in many instances, by the executive department. And furthermore, statutory forfeitures take place instantaneously upon the commission of the offense, while the common law forfeitures only divesst title upon a proper judgment in a suit instituted for that purpose.

The case at bar presents a case of statutory forfeiture, under,

and by virtue of the act which gave the Defendant existence and also by virtue of thc act of the Choctaw Nation enforceable by the executive departments. Its efficiency is the same, and its results as obligatory, and entitled to tthe same weight and respect as though a regular Court proceeding had been had.

Wood v. U. S. 16 Pet. U. S., 362.

U. S. v. One Hundred Barrels of Whiskey, 2 Abb. U. S. 305.

Bags Coffee, 8 Cranch U. S. 398, U. S. 1960.

While it is true that the forfeiture must be completed b yseizure yet when the seizure is made iit relates back to the time of the forfeiture.

In the Mary Celeste, 2 Lowell, U. S., 354.

Clark v. Protection Insurance Co., 1 Story, U. S. 109.

The forfeiture was effective from the very moment of th illegal encroachment upon the public domain of the Choctaw Nation. The commission of the prohibited act ispo facto operates as a forfeiturs.

U. S. v. One Hundred Barrels of Spirits, 2 Abb. U. S. 305.

U. S. v. 1960 Bags of Coffee, 8 Cranch, 398.

Wood v. U. S., 16 Pet. U. S., 342-369.

Forfeitures are recognized and treated not as contracts but as a punishment for offense. It is a punishment annexed by law to some illegal act or negligence in the owner of lands, tenements or

hereditaments whereby he looses all his interest therein and they become vested in the party injured as a recompense which he alone or the public together with himself hath sustained; a divesture of property without compensation in favor of another because of a default or offense; a penalty by which one loses his rights and interests in his property.

2 Black Com. 267.
Wiseman v. McNulty, 25 Cal., 237.
Eskin v. Scott, 70 Tex. 445.
Gosslink v. Campbell, 4 Iowa, 300.
Indianapolis v. Fairchild, 1 Ind. 318.
Flin v. U. S., 1 Wyoming, 247.

At common law lands purchased by an alien were forfeited to the commonwealth.

1 Black Com. 372.
2 Black Com. 274.
Read v. Read, 5 Call. (Va.) 207.

When an act of Congress demands an absolute forfeiture as the consequences of an act the title of the United States accrues when the prohibited act is done.

U. S. v. 1960 Bags of Coffee, 8 Cranch, U. S. 398.
Henderson v. Distilled Spirits, 14 Wall U. S. 44.

The Superintendent of Indian Affairs and Indian Agents and sub agents are authorized to remove from the Indian Territory all persons found therein contrary to law, and the President is author-

ized to direct military force to be employed in such removal.

The Commissioner of Indian Affairs is authorized and requested with the approval of the Secretary of the Interior, to remove from any tribal reservation any person being therein without authority of law or whose pesence within the limits of the reservation may in the judgment of the Commissioner be detrimental to the peace and welfare of the Indians and he may employ such force as is necessary to enable the agent to effect the removal of such persons.

Rev. Stat. U. S. Secs. 2147-2149 inclusive.

The removal of persons from the Indian Territory under these statutes is a matter entirely within the discretion of the officers to whom the power of removal is committed and their action is not subject to review by the courts.

U. S. v. Sturgeon, 6 Sawy., U. S. 29.

Echols v. Tate, 53 Ark. 12.

Adams v. Freeman 50 Pac. Rep. 135.

Indian Affairs Commission 20, Opinion Atty Genl. U. S. 245.

"Where lands and franchises are thus held, any public assertion by legislative act of the ownership of the state, after default of the grantee—such as an act of resuming control of them and appropriating them to particular uses, or granting them to others to carry out the original object —will be equally effective and operative."

Atlantic and Pacific R. Co., v. Mingus, 165 U. S. 778.
U. S. v. RePentigney, 72 U. S. 646.
Fairfax v. Hunter, 7 Cranch, U. S. 603.
Smith v. Maryland, 6 Cranch, U. S. 286.

This was an action of ejectment brought by the railroad company in the District Court of San Miguel County ,New Mexico, to recover of the Defendant Mingus, a parcel of land to which the Plaintiff cliamed title under its land grant, made by Act of Congress of July 27, 1866.

The land grant having been made by Congress for the purpose of encouraging the construction of the railroad, coupled with it were many conditions, some of which at least, not having been performed, Congress, on July 6, 1886, passed an act declaring all the lands excepting the right of way "adjacent to and coterminus with the uncompleted portions of the main line of said road embraced within both the granted and indemity limits, as contemplated" by the act of organization, to be "forfeited and restored to the public domain." The validity of his act raised the only question between the parties. In the case at bar the court should not lose sight of the fact that the validity of the act is not questioned, as before stated, it is only the precedure under the act that is the subject of controversy

"The act of 1886 is a naked declaration of forfeiiture and a legislative restoration of the lands of the public domain. It contains no recital of braech of condition. It alleges no failure of performance on the part of the grantee.

It provides for no judicial inquiry into alleged facts of failure to perform, nor the legal effect thereof, nor offsets thereto. It authorizes no subsequent proceedings of any kind to effect a forfeiture or to extend a hearing to the parties in interest. It contains no suggestion of any purpose of devoting the lands to the completion of the road in some other way, or even through some other agency. There is no provision protecting the vested rights of the mortgagee nor making the proposed restoration of the lands subject to their possible rights.

"The law simply declares a forfeiture and requires an immediate restoration of the lands to the public domain. It by legislative declaration divests the outstanding fee-simple title, and by mere force of the statute re-invests the title absolutely to the United States. It restores the lands to the public domain, and thereby subjects them to sale and entry under the general public land laws."

Atlantic and Pacific R. Co. v. Mingus, 165 U. S. 774.

The legislative declaration, the legislative will, is "due process of law" so as to divest the title of the grantee and to reinvset it in the grantor. As to private grants it is usual for forfeiture to become effective by re-entry, no judicial inquiry or procedure being necessary.

By operation of Sec. 10 of the Act of Congress heretofore referred to which permitted the Choctaw Coal & Railway Co., to build

through the Indian Territory, and by Sec. 7 of the Treaty of 1855, and Sec. 43, of the Treaty of 1866, made between the United States Government and the Choctaw and Chicasaw tribe of Indians; and by authority of the hoctaw Nation and an Act of the Choctaw Council, known as "Claims and Improvements," and various other Acts of Congress, the aforesaid property in controversy became forfeited to the Choctaw Nation when built upon the public domain and no judicial hearing was necessary, as, by operation of law, the property became absolutely vested in the Choctaw Nation. In the case of McClure vs. Maitland, decided by the Supreme Court of Va., it was so held by the Court that under the statute enacted by the Legislature of Virginia, requiring all persons who own land to list the same with the Tax Assessor, and failure to do so for a period of five consecutive years, that the same should be forfeited to the State of West Virginia.

The Court held in passing upon the aforesaid case, where the owner thereof had not listed the same with the tax assessor for five consecutive years as aforesaid as follows, towit:

"The title to the land and all the right and interest of the former owner, having thus, by his default and the operation of the law, become absolutely vested in the State and become irredeemable, she, having thus acquired a perfect title to, and unqualified dominion over, the land, had the undoubted right to hold or dispose of it for any purpose in any manner and upon any terms and conditions she

might in her sovereign capacity deem proper, without consulting the former owner or any one else. For after the forfeiture had become complete, as it had in the case before us, the former owner had no more claim to, or lien upon the land, than one who never had pretended to own it. In the exercise of this perfect dominion over her own property the state saw proper to transfer and vest her title to so much of said land owned by her in any person other than those who occasioned the default, etc."

McClure vs. Maitland, 24 West Va. 561, 175-178.

By the Legislative Act of Va. it was intended by its own force and energy to render the forfeiture absolute and complete, without the necessity of any inquisition, judicial proceeding or finding of any kind, in order to consummate the forfeiture.

This Act was held by the Supreme Court of the United States to be constitutional and the Act itself was due process of law.

Henry C. King vs. M. B. Mullins et al., 171 U. S. Supreme Ct.
Report, 43, Law Edition, Page 214.

The constitutional competency of the Legislature of Virginia to pass these laws and thus consummate the forfeiture and perfectly divest all the right, title and interest of the former owner by the mere energy and operation of the statutes themselves, has been repeatedly

affirmed by the Court of Appeals of Virginia.

Staats vs. Board, 10 Gratt, 400.

Wild vs. Serpell, 10 Gratt, 4-5.

LeVasser vs. Washburn, 11 Gratt, 572.

Usher vs. Pride, 15 Gratt, 190.

Smith vs. Tharp, 17 W. Va., 221.

Holly River Coal Co. vs. Howell, 36 W. Va., 489, 501.

Henry C. King vs. M. B. Mullins et al., 171 U. S. Supreme Ct.

Reports, 43, Law Edition, page 214.

"Where lands and franchises are thus held, any public assertion by legislative act of the ownership of the state, after default of the grantee—such as an act resuming control of them and appropriating them to particular uses, or granting them to others to carry out the original object—will be equally effective and operative."

Atlantic and Pacific R. Co. vs. Mingus, 165 U. S., 778.

U. S. vs. Repentigney, 72 U. S., 646.

Fairfax vs. Hunter, 7 Cranch, U. S., 603.

Smith vs. Maryland, 6 Cranch, U. S., 286.

U. S. vs. DeRepentigny, 72 U. S., 643, 646.

McMicken vs. United States, 97 U. S., 204, 217.

Van Wyck vs. Knevals, 106 U. S. 360, 368.
Schulenberg vs. Harriman, 88 U. S., 44, 63.

In further support of this doctrine of forfeiture without judicial inquiry we would refer to the statutes of the Choctaw Nation on the subjects unlawful hunting, intoxicating liquors, etc.

Durant's Code, p. 216, Sec. 3.
Durant's Code, p. 221, Sec. 2.

So careful were the Choctaws of the public domain and so intent were they that there should be no aggressions or encroachments upon it, that by Act of the General Council, they required all citizens desiring to rent or to employ non-citizens to get a permit to do so.

Durant's Code, Sec. 1, p. 238; Sec. 1, p. 240.

To the same effect are the statutes of the United States as applicable to the importation of firearms and whiskey into Alaska, and also to the Seal Fisheries.

Rev. Stat. U. S., Secs. 1955, 1956, 1961, 1968.

Also as to the introduction of wines and spiritous liquors into the Indian country.

Rev. Stat. U. S., 2140, 2041, 2147, 2149.

Also as to the customs, registering, enrolling, and licensing ves-

sels.

Rev. Stat., Secs. 3062, 3074, 3075, 3077, 3082.

Also as to commercial relations with contiguous countries.

Rev. Stat., Sec. 3099.

Also as to internal revenue.

Rev. Stat., Secs. 3187, 3188, 3242, 3257, and 3458.

And so are the statutes with reference to reprisals, exclusions of Chinese laborers and perhaps other subjects.

Under the Chineee exclusion act it is within the constitutional power of Congress to deport Chinese unlawfully in the United States and to commit the enforcement of the law to executive officers.

Wing Wong v. U. S., 163 U. S., 235.
Fong Yue Ting v. U. S., 149 U. S., 698.
Chae Ching Pang v. U. S., 130 U. S., 581.

This case emphatically calls for the settled rule that those claiming rights against established and recognized governments must stand upon express provisions.

Dubuque and P. R. Co. v. Litchfield, 16 U. S. La. Ed., 509.
Leavenworth L. & G. R. Co. v. U. S., 92 U. S. 740.
Coosan Min. Co. v. South Carolina, 144 U. S. 562.

The right claimed by this Defendant being against the Choctaw Nation it must be so clearly defined and established that it does not admit of doubt in the mind of the court and must rest upon express provisions of the law.

But as conclusive of this while matter a sale of non-citizens' improvements under an act of the General Council of the Cherokee Nation, similar to the one at bar in all its essentials, has been passed upon by this Honorable Court and sustained.

Hockett v. Alston, 58 S. W. R. 677.
Stephens v. Cherokee Nation, 174 U. S. 445.

From the aforesaid cited authorities on forfeiture we think it conclusively shown that the property in controversy when sold by the Indian Sheriff was forfeited to the Choctaw Nation, and that Defendant had no vested right in said property.

If so, the action of the Plaintiff is complete. But the Defendant contends that the sale made by the Indian Sheriff was not in accordance with the laws of the Choctaw, and that the property was sold on a credit and therefore the Plaintiff acquired no title for the reason he did not pay cash for said property.

The Court of Appeals for the 8th Circuit, in deciding this case held that Plaintiff did not acquire any right to the aforesaid property

for the reason he did not pay cash for the same.

Rec. p. 132.

Part of the opinion of the Court of Appeals for the 8th Circuit raeds as follows:

> "The act of the Choctaw Legislature under which the Plaintiff claims, did not purport to transfer the title or right to improvements made, or bought, by a non-citizen except upon a sale by the sheriff" to the highest Choctaw citizen bidder for cash.

An officer making a sale under such a statute must yield obedience to its directions. He can not sell upon credit or accept any other than an unconditional cash bid. So also a purchaser whose bid is made an daccepted in disregard of the directions of the statute, or who does not pay the purchase price acquires no interest in a right to the property."

The following authorities are cited by the Court:

Hooper v. Castetter, 45 Neb., 67, 76.
Phelps v. Jackson, 31 Ark. 272, 278.
People ex rel. v. Hays, 5 Cal. 66.
Negley v. Stewart, 10 S. & R. 207.
Robins v. Bellas, 2 Watts 359.
Wheatley v. Tutt, 4 Kans. 195.

Swope v. Andery, 5 Ind. 313.
Reynolds v. Wilson, 15 Ill. 394.

By Reading the aforesaid authorities there is not a one of them that has a centilla of application to the case at bar. All of the aforesaid authorities show that where sales were set aside on account of irregularity of the sale, or where a statute was not strictly followed is where the party who filed proceedings to set the sale aside had vested rights in the property. In the case at bar the Defendant has no vested rights, and before a party can be heard to complain he must show an interest in the property.

This sale is unlike the ordinary judicial or foreclosure sale in which the ostensible owner of the property has vested right or an equity, and his title to the remainder, if there should be one after the process of the sale are set aside.

The Defendant has no interest in the improvements sold. His interest past with the forfeiture. He could neither be benefited nor harmed by it. It does not concern the Defendant whether the sale was regular or irregular, or whether or not, the statute was followed, or how much the property brought, as the improvements when sold were not the property of the Defendant, but of the Choctaw Nation, and the sale past title from the Nation to the Plaintiff, and no one could object to the sale but the Choctaw Nation. Said Nation was satisfied with the sale.

A person not interested in the property sold can not be heard in

objection to the sale and the person attacking the sale must be able to show injury resulting to him therefrom.

McLaughlin v. Bradford, 82 Ala. 43.
Moniton of Johnson, 3 La. Ann. 656.
Fortier v. Simpel, 6 La. Ann. 53.
Stockton v. Downey, 7 La. Ann. 581.
Gilmer v. Nicholson, 21 La. Ann. 589.
Bachle v. Webb, 11 Neb. 429.
Frink v. Morrison (Supreme Ct. S. Pp. T.), 13 Abb. Pr. (N. Y. 80.)
Brockman v. Allison, 1 Ky. L. Rp. 278.

An examination of the Authorities cited by the U. S. Circuit Court of Appeals for the Eighth Circuit in the Opinion rendered by it, shows as follows:

In the case of Hooper v. Castetta, 45 Neb. Page 67-76, 63 Northwestern, page 135-45, holds as follows:

This was an action to foreclose a mortgage by Abraham Castetta against O. N. Remington and wife, mortgagors, and Edward Hooper et al., judgment creditors.

And a decree was had by Castetta authorizing a sale of the property. The sheriff did not follow the terms of the decree. Hooper et al. judgment creditors who had vested rights against O. N.

Remington and wife, intervened to set aside the sale for want of regularity. The court sustained the action and set aside the sale.

Peoples vs. Jackson, 31 Ark., pp. 272-278, holds as follows: A held two notes of equal amount, for the purchase money of land. He transferred one of them to B as collateral security for a debt. A afterwards died and proceedings to foreclose the vendors lien were brought in the name of the Administrator upon both notes. Under a decree of foreclosure for cash, the land was bought in by heirs of the deceasedant on a credit. B who held one of the notes and had a vested right, filed proceedings to set the sale aside for the want of regularity in the sale. The Court sustained B's action and set the sale aside for the reason that B owned one of the notes and had vested right in the property sold.

Wheatly v. Tutt, 4 Kas. 195.

The facts show as follows: Tutt sued Wheatly a non-resident, and attached a lot belonging to him in a town. Tutt recovered judgment for $1483.00, and procured an order of sale of said lot. The sheriff sold half interest in said lot when the order provided for the sale of the entire lot. Wheatly, the Appellant, who had the vested right and was the owner of the lot, instituted proceedings to set aside the sale on the grounds of irregularity. The case was reversed and the sale held erroneous for irregularity. 14 Kas. 195.

Reynolds v. Wilson, 15 Ills. 394, holds as follows:

Wilson, executor of Squires, obtained an order to sell a portion of real estate belonging to Squires, deceased, to pay debts of said deceased. The order of sale provided for advertising of the land by six weeks notice in a newspaper, and the land was sold, and the report of the Executor showed that only four weeks notice were given. The heirs of Squires, deceased, who had a vested right, excepted to the report of the sale for the want of regularity and the sale was set aside by the Court.

It will be seen from the aforesaid authorities cited by the Court of Appeals for the Eighth Circuit, in support of its opinion in this action, that none of them apply to the facts in this case as all the authorities cited by said Court of Appeals refer to cases wherein the party seeking to set aside the judicial sale for irregularity or the want of payment was the party who had a vested right and interest in said action.

In the case at bar the Defendants have no interest in said action and stand as a stranger to the suit, and can not be heard to complain.

The Supreme Court of the United States in the case of Semmes vs. U. S. 91, U. S. page 195, the Court in speaking through Mr. Justice Clifford said:

> "Property condemned as forfeited to the United States under an Act of Congress becomes the property of the United States from the date of the decree of condemnation. Judgment of forfeiture was rendered on the 5th day

of April, 1865, and the land in question became from that date the property of the United States, and it may be well contended that from that time, it could not concern the respondent whether the proceedings of the marshal in selling same were regular or irregular, as the title to the land was lost to him when it became vested in the United States. He now contends that the sale was null because it was not made on the day named in the writ of menditioni exponas; to which the United States makes answer, that he can not be heard to raise that question as his title was dievsted by the decree of condemnation."

But the chief ground, and in fact, the sole one on which the Circuit Court of Appeals decided the case at bar was one which had not been passed upon in either of the Courts below, viz.: That the act of the Choctaw Legislature, under which the sale of the property in question was made, by its terms required that said sale be for cash. That this provision not having been strictly complied with, the sale was therefore void and of no effect.

If this non-compliance with the statue was the result of the Sheriff, in his executive capacity, acting on his own initiative or through ignorance or carelessness, as an examination of every case cited by the Court for the eighth Circuit in support of this theory will show to have been the case, there might be some weihgt to this contention. But where the variance from the strict letter of the law is by agreement of the parties and of the only parties having an in-

terest or a right to be heard, a very different question is presented. As was said in an earlier decision of this Court: in a case involving the legality of the proceedings of local officers to pass the title to land and therefore similar to the case at bar: "Where the act done is contrary to the written order of the king, produced at the trial, without any explanation, it shall be presumed that the power has not been exceeded; that the act was done on the motives set out therein, and according to some order known to the king and his officers, though not to his subjects.

Strother v. Lucas, 12 Peters, Page 438.

And in various decisions in this country this precise question has been considered and it was held that though the Statute required the Sheriff to sell for cash, yet by agreement of the parties this might be altered and time allowed.

Second Ed. Am. & Eng. Ency. of Law, Vol. 25, Page 768.

Chase v. Monroe, 30 N. H. 427.

Sauer v. Steinbauer, 14 Wis. 70.

That the Choctaw nation did not agree will not be contended for it was a party to the very transaction. But it may be insisted that the Choctaw Coal & Railway Co. must be a party to such an agreement to bring the case within the rule above set forth. That would be true were it an execution debtor in sheriff's sale or owner

of the equity in foreclosure proceedings. In such cases it would possess an interest which must be conserved. But such is not the case at bar. What interest in the property remained to the appellee company? It was from the beginning but an intruder, its only right in the Indian Country being by virtue of the Act of Congress granting it a right of way, the very terms of which provided that any act on its part "looking toward the change or extinguishment of the present tenure of the Indians in their lands, or any attempt to secure any further grant of land or its occupancy should operate as a forfeiture of all the rights and privileges of said Railroad Co. under this Act." Not only unde rthe foregoing provision did the Railway Co. forfeit its rights in the operation of its road in the Territory, but agian and more specifically when, having been duly notified to dispose of its holdings in accordance with the act of the Choctaw Legislature, approved Oct. 30, 1888, it failed to comply with such requirements, did it lose and absolutely forfeit whatever rights and interests it may have had.

Now, if Appellant's contentions heretofore presented at greater length, that, under the law of the Choctaw Legislature, requiring the sale of the alien holdings within 30 days, was a valid and constitutional enactment, what right remained in the appellee to question the validity of the sale in any respect. It was not the sale by the sheriff that worked the forfeiture. That was merely the method provided for disposing of property already owned absolutely by the Choctaw nation and in which the Appellee, by reason of having broken the laws of that nation, had not the slightest interest. The nation did not wish to hold such properties. Therefore, it provided

for their disposition. And the appellee had no more right to question the mode in which this was effected than if it had never existed in the Territory. Its interest was forfeited and it made no difference whether the property brought $1.00 or $1,000,000, there could be no remainder over to which it was entitled.

A Defendant in ejectment who shows no title to the land in dispute can not take advantage of technical imperfections in Plaintiff's title. McAllister's Lessee v. Williams, 1st Tenn. 334.

SECOND ASSIGNMENT OF ERROR. The Court erred in excluding from the deposition of William Ansley, a witness on behalf of the Plaintiff the following:

> "And the Chief ratified my action as to the sale and paymetn of said property, and instructed me to proceed at once and employ attorneys to assist me in getting possession of the property for the purchsaers, and I at once employed attorneys to assist the Plaintiff, William H. Ansley, in obtaining possession of the property sold by me as sheriff. Mosely and Smith of Denison, Texas, a firm of lawyers, and Cole and Redwine of South McAlester, were employed by the Chief of the Choctaw Nation, to assist the Plaintiff in obtaining possession of the property." Rec. Page 136.

The faithful execution of the laws of the Choctaw nation being vested by the Constitution in the principal Chief and this statute de-

pending upon the Executive Department for its enforcement, it was entirely competent for the Deputy to report to him what he had done that he might govern himself accordingly. The laws with reference thereto could only be inforced in their ultimatum by him, and he could not know the status of affairs except to receive reports from his officers under him. The principal Chief had directed the sale of this property.

Constitution of the Choctaw Nation, Art. 5, Sec. 8. This provision of the Choctaw constitution is self-executing, for it has the manifest intention that it should go into immediate effect, and no legislation is necessary to the enforcement of the duty imposed.

Friedman v. Mathas, 8 Heis (Tenn.) 488.
Peoples v. Hoge, 56 Cal. 612.
Hills v. Chicago, 60 Ills. 86.

THIRD ASSIGNMENT OF ERROR.

The Court erred in overruling and disallowing Plaintiff's objection to the introduction in evidence of a report of Yancy Lewis, Special Master Commissioner, in the case of Longhorn Wister et al., vs. The Choctaw Coal & Railway Company, of July 17th, 1894, and in admitting said report in evidence. The report is not competent and has no relevancy whatever, and is not material to any issue in this case. Rec. Page 136.

FOURTH ASSIGNMENT OF ERROR.

The Court erred in overruling and disallowing Plaintiff's objection to the introduction in evidence of a final order or decree discharging the Receiver in the case of Longhorn, Wister et al. vs. The Choctaw Coal & Railway Company, which was entered on the 22d day of March, 1895, in the United States Court for the Central District of the Indian Territory at South McAlester. This report or decree is not competent nor relevant, nor material to any issue in this case. Rec. Pages 136 and 137.

V.

The Court erred in overruling and disallowin gPlaintiff's objection to the introduction in evidence of a decree in the case of Longhorn, Wister et al. vs. The Choctaw Coal & Railway Company, which was entered on the 17th day of July, 1904, in the United States Court for the Central District of the Indian Territory at South McAlester. The decree is irrelevant, incompetent and immaterial to the issues, and in no sense an adjudication to this Plaintiff's rights, he being neither party nor privy thereto.

Rec. Page 137.

VI.

The Court erred in overruling and disallowing Plaintiff's ob-

jection to the introduction in evidence of the supplemental report of Yancy Lewis, Special Master Commissioner, in the cause of Longhorne, Wister et. al. vs. The Choctaw Coal and Railway Company, the said report being made to the U. S. Court for the Central District of the Indian Territory, and in admitting said report in evidence; to the ruling of said Court in admitting said report in evidence the Appellant then and there excepted.

VII.

The Court erred in overruling and disallowing Plaintiff's objection to the introduction in evidence of the final decree in the cause of Longhorne Wister et al. vs. The Choctaw Coal & Railway Company, which was entered on the 13th day of October, 1894, in the U. S. Court for the Central District for the Indian Territory at South McAlester, and in admitting said final decree in evidence to which ruling of the Court the Appelant then and there excepted.

Rec. Page 137.

VIII.

The Court erred in overruling and disallowing Plaintiff's objectio nto the introduction in evidence of the report of Yancy Lewis, Master in Chancery, in the cause of Edwin Chadick, Trustee. vs. Receiver of the Choctaw Coal & Railway Company in the United States Court for the Central District of the Indian Territory, and in

admitting said report in evidence, over the objection of said Appellant, to which he then and there excepted.

Rec. Page 137.

IX.

The Court erred in ordering and decreeing that the Plaintiff, W. H. Ansley, take nothing b ythis suit, and ordering and decreeing that the Defendant, Francis I. Gowen, Receiver, have and recover of and from the Plaintiff all his costs laid out and expended, to which ruling of the Court Appellant then and there excepted.

Rec. Page 137.

X.

The Court erred in dismissing Plaintiff's suit and refusing to grant the relief sought, and in taxing the plaintiff with the costs in this cause.

Rec. Page 137.

Errors 2, 3, 4, 5, 6, 8, 9 and 10, in the Court of Appeals for the Indian Territory, will be argued together in addition to what has already been said.

Rec. Page 137.

The Honorable United States Court of Appeals for the Indian

Territory, in passing upon this case has predicated its judgment upon two propositions, towit:

First: To state briefly, that the Choctaw statute, under and by virtue of which the property in question was sold by the Choctaw sheriff, is of no effect, and void; and Second, that this action was improperly brought against Receiver, he having previously been discharged.

It will therefore be observed by this Honorable Court, from the inspection of the Record, that the U. S. Court of Appeals in the Indian Territory, has unwittingly fallen into the error of having made issue, etc., a case not made by the pleadings in the case at bar, or even as much as raise an argument of counsel.

Defendants do not in the answer attack the validity of the Choctaw statute, nor is its validity called in question by a demurrer, or any other character or pleading, and the validity or constitutionality of the statute can only be challenged by direct attack and never indirectly, or by implication.

Rec. Pages 26-31.

Not only is the validity of the statute in question denied, but to the contrary, it is to all intents and purposes, admitted.

Defendants in their answer use the following language:

"Defendants further say that said sale was not made

in accordance with the laws of the Choctaw Nation; that the property was sold on a credit; that no notoriety was given."

What stronger or more direct admission could be desired as to the validity of the Choctaw statute than is in this language found? It is clear that it was never in the mind of the pleader to question its validity, and it has not been done.

But the Court, to sustain its contention, has referred us to Mansfield's Digest, Sec. 5054, which is in the language following:

> "When a party files a demurrer with his answer or reply the demurrer must be presented for the consideration of the Court at or before the first calling of the cause for trial after the filing of the same. If he fails to do so the demurrer shall be regarded as waived as to all points except the jurisdiction of the court, and that the pleading demurred to does not state facts sufficient to constitute a cause of action or a defense, counter-claim or set off."

This statute is without any sort of application to the case at bar and in no aspect of the case can it be applied. As will be seen from its language, it can only reach such matters as effect the court's jurisdiction or as belong to the insufficiency of the averred facts to constitute a cause of action, neither of which is raised by demurrer or otherwise, and neither could it be done in good faith and with prob-

ity and sincerety.

The language of the pleadings which the Court had in mind as to raising these questions is as follows:

> "Come now the defendants in the above styled cause, and say that the complaint and the amended complaint filed herein are insufficient in law and upon this they pray the judgment of the Court."

It is most respectfully submitted that this is not a pleading raising a jurisdictional question, neither does it attack the complaint for want of facts sufficient to constitute a cause of action, and if in fact it may be dominated a demurrer at all it is general going to the complaint for want of equity upon its face.

By no intelligent or reasonable rule of construction by which may be measured the scope of pleadings in equity, could it be found that this declaration embodied in defendant's answer questions the complaint for want of facts sufficient to constitute a cause of action. It is for insufficiency in law that the complaint is challenged which is general in its nature and must be treated as having been by the Court below overruled.

And appellant submits most respectfully, but earnestly, and as heretofore suggested, this question has never been made or relied upon by counsel for defendants, but is for the first time raised by the Honorable United States Court of Appeals and decided upon its own motion.

"Defendants cannot go to trial before a jury on the facts of the case and then raise an objection for the first time in this court that the action is one of equitable cognizance.

Burbanks vs. Biglow, 19 U. S. (La. Ed.) p. 51.

It is too late on appeal to object for the first time to the particular form of the action.

Where the subject matter of a suit belongs to a class over which a court of equity has jurisdiction, the objetcion that the complainant had an adequate remedy at law not made until the hearing in the Appellate Court comes too late.

Reynes vs. Dumont, U, S. (La. Ed.) 32, p. 934.

Tyler vs. Savage, U. S. (La. Ed.) 36, p. 82.

Brown vs. Lake Superior Iron Co., U. S. (La. Ed.) 33, p. 102.

Appearing and pleading to the action waives al misjoinder of parties.

Campbell vs. Haverhill, U. S. (La. Ed.) 39, p. 280.

The Choctaw Nation has full power and authority to pass laws governing its own people and to sell its own property.

Thebo vs. The Choctaw Tribe of Indians, 13 C. C. A., page 519.

Nethlin et al. vs. Ice, 5. C. C. A., page 43.

Cornell's Judges et al. vs. Shannon et al., 11, C. C. A., page 465.

But as a further answer to this contention that the Choctaw statute was unconstitutional, this Honorable Court has, in effect, sustained a statute of similar import, and which had a direct attack made upon it and was presented to the Court squarely for its judgment and determination.

Hockett vs. Alston, 58 S. W. R. Page 676.
Hockett vs. Alston, 110 Fed. Rep. Page 910.

The Second proposition set forth by the Honorable United States Court of Appeals for the Indian Territory; that the Receiver had been discharged at the time of bringing this action, etc., as viewed by Appellant, is not determinative of any issue in the case and has but little bearing upon it.

It will be observed that the beneficiaries named in the trust deed, Hartshorne and Alderson, deny that they are the beneficiaries, or that they ever advanced one cent of the money with which the improvements were made.

The mortgagor, Sittel, claims no equity or other interests in the property; the beneficiary brought forward in the answer under the trust deed an dasserted to be the party advancing the money with which the improvements in question were made, is a dead and dis-

solved corporation with its stockholders unknown and scattered to the four winds, and its affairs passed through the hands of the Receiver with never a mention of the improvements in question as an asset of the defunct corporation; no sort of claim made then when creditors would be benefited by this corporation to this property as an asset. The trustee being vested with whatever title the trust deed could confer, and with the actual and physical possession of the property, and the mortgagor disclaiming all interest in the property mortgaged, and the beneficiary, as set out in the answer, being a dissolved and bankrupt corporation with its stockholders sctatered to the four corners of the earth and failing and refusing to count the improvements in question an asset to be administered by the Receiver for the benefit of creditors is substantial evidence of the fact that such beneficiary, if beneficiary at all, clearly recognized the fact that said improvements were forfeited to the Choctaw Nation because made in violation of law.

In the decree of sale is nowhere to be found the property in question, it was not intended to be sold, was not sold, and the commissioner had no power to sell it and the purchasers no power to buy it. The property and franchise of the Choctaw Coal & Railway Co. were sold by said commissioner to Sidney F. Tyler and others, a committee appointed by the stockholders and creditors of the Choctaw Coal & Railway Co. to purchase same, and which purchase was made by said committee for the Choctaw, Okalhoma && Gulf Railroad Co., a company organized by Act of Congress of August 24, 1894, to take title thereto, and which Act specially provides "that

such new corporation shall not have the right to acquire and hold any houses or buildings at South McAlester situated off the right of way and depot grounds of said Choctaw Coal and Railway Co. The property decreed to be sold in said decree is particularly itemized and set forth.

Rec. pp. 75-100.

The property in question was never in the hands of the receiver and no decree was ever made to sell it in the receiver suit, but it was always in the hands of the trustee, first Chadick, then McLoud, who was substituted for Chadick in the trust deed and who finally sold the same. The receiver was made a party simply because of the allegations in the complaint that he had assciated himself with the trustee and made some of the most valuable improvements on the property. If the receiver was an improper party, a motion in the court below to strike was the proper remedy or demurrer for misjoinder of parties.

But the record discloses that on the 4th day of October, 1895, more than eighteen months after the decree discharging the receiver, that the case of Chadick, Trustee, vs. Receivers of the Choctaw Coal and Railway Co., was heard on the report of Yancey Lewis, Special Master in Chancery, wherein it was adjudged that J. W. McCloud was the legal and proper trustee for the Choctaw Coal and Railway Co., under said mortgage or deed of trust, and entitled to exercise all the powers conferred, and fully authorized and empowered to sell said property, which was the same property now in question, and that

in pursuance of said decree, said McLoud did, on the 30th day of December, 1895, sell the same, at which sale Hon. Yancey Lewis and others became the purchasers; yet Defendants, with full knowledge of all these facts, attempt to procure this Court to believe that his sale was made by the receiver and that the receiver had been discharged before the action was begun, and therefore this suit must fail.

Rec. pp. 18, 19, 20, 90-128.

In the receiver suit the property now in question was never treated as an asset of the Choctaw Coal & Railway Co., for it was always known that it had no title and could convey none to the purchaser; therefore it was allowed to remain in the hands of the trustee and was sold by the trustee more than eighteen months after the receiver's sale and to an entirely different purchaser. A corporation had been organized by a special act of Congress to take over the assets of the Choctaw Coal & Railway Co., known as the Choctaw, Oklahoma and Gulf Railroad Company, and if the property now in question was an asset, why was it not conveyed with the other assets of the Choctaw Coal & Railway Co., to the Choctaw Oklahoma & Gulf Railroad Co., the purchaser? Simply because it was not an asset and it was known to Congress that it was not an asset, hence, the legislation forbidding its purchase. It was a most extraordinary thing for the Congress of the United States to forbid the purchase of this property by the new Company which it had created and it would not have done so except it was absolutely convinced that the

proposed seller had no title and that in its procurement, in its occupation, a great wrong had been perpertrated wantonly and without excuse upon the Nation's own ward.

The thing that precipitated this suit and caused it to be filed when it was the fact that the trustee had advertised the property for the sale and unless restrained would sell the same on December 30, 1895, as before stated. Injunction was denied and the property sold, or at least the record shows that it was advertised for sale by the trustee, and the Court will presume that the trustee made the sale.

Rec. pp. 19 and 26.

The trust deed shows on its face a most palpable fraud practiced on the Choctaw Nation. In the first place it was not executed for more than a year after the improvements had been made, showing that the Choctaw Coal & Railway Co., deliberately and willfully in violation of positive law and every principle of justice and right and common honesty, walked in and took charge of the premises and went to erecting houses upon the same in defiance of the laws of the Choctaw Nation and of the Statutes and treaties of the United States. Furthermore it appears that $86,000 in round numbers was spent while only $45,000 was secured by the trust deed. How did they expect to secure the remainder? It seems strange that the Choctaw Coal & Railway Co., would make $42,000 in improvements for Mr. Sittel without any security at all. The whole thing was a

fraud and a subterfuge undertaken to be worked through Sittel to procure possession of the property of the Choctaw Nation. Sittel says so. Chadick says so. Sittel had no power to make such disposition of the property. He could not mortgage it to others to erect houses thereon in violation of the laws of the Choctaw Nation. The Railroad Co., could not erect the houses off of its right of way because both the laws of the United States and of the Choctaw Nation prohibited it. Sittel could not confer upon the Company the right to do that which the law prohibited.

But as a further and complete answer to this whole matter no question was ever made as proper and necessary parties to the action in the United States Court for the Central District of the Indian Territory, and could not for the first time be made in the United States Court of Appeals or in this Court.

Story v. Livingston, 13 Pet. (U. S.) 359.

John Cary et al v. Henry T. Brown, 92 U S. 470.

The necessary parties so far as the record shows, have all been impleaded. The demurrer does not name the parties which the defendants claim should have been joined. The Fifty-second and fifty-third equity rules require that the fact that parties in interest are not before the court, be set up by plea or answer.

If the defect of parties appears on the face of the bill objection may be raised by Demurrer; but if the defect is not apparent, a defendant must set up the defect by plea or answer, pointing out and naming the persons who ought to be made parties and giving the

reasons therefor.

Sheffield and B. Coal, Iron and Railway Co. v. Newman, 23 U. S. C. C. A. 463.

Greenleaf v. Queen, 1 Pet. U. S. 138.

Segee v. Thomas, 3 Blatch, 11 Fed. Cas. No. 12, 633.

Florence Sewing Machine Co. v. Singer Mfg, Co. 8. Blach, 113 Fed. Cas. No. 4, 884.

U. S. v. Gillespie, 6 Fed. 803.

As it appears from the record there is no beneficiary named in the trust deed who has any interest, and the party named in appellant's answer, the Choctaw Coal & Railway Co., as having advanced the money with which the improvements in question were made, and now seeks to follow it into the improvements and have it impressed as an equity upon the same made such advancement with full knowledge of its unlawful character, declined to report it as a corporate asset to the receiver which it was duty bound to do if it was an asset and was administered upon as an insolvent corporation and its character dissolved and determined without ever bringing forward or asserting whatever rights it claimed is not such beneficiary as is required to be made a party in the first instance, and if it claimed rights as a beneficiary it should have by proper pleading had itself or its interest made a party by a trustee appointed for this purpose if the receiver had been discharged and could no longer represent its interests or if the same could not be protected by the trustee. Appellant vouchesafes the statement that it was wholly unnecessary to make

anyone a party defendant except the trustee under the facts as they appear in the record of this case and that the making of the receiver a party at all was simply because of a situation heretofore stated, and for the reason that said receiver had associated himself with the trustee and completed some of the buildings as aforesaid.

It was advanced in argument by defendant in the court below and we therefore assume will be here, that the complaint is insufficient to confer jurisdiction upon a court of equity to remove cloud from title, etc.

Ifthere was anything in this contention of appellees if raised at the proper time it must fail here for the reason that the jurisdiction of the court for want of sufficiency of the complaint or otherwise not having been questioned in the Court below can not now for the first time be raised here. To permit this to be done would be to disregard all the established rules of practice and allow an entirely different case to be made in the Court of Appeals to that which was made in the court below, which would work destruction of the appellate character of this Court and resolve it into a court of original jurisdiction.

In the first place this is not an action simply to remove cloud from title, but it is also an action for posession. Appellant does not claim title to the soil, but only to the right of occupancy. Appellant does claim title to the improvements and the righ of occupancy and he avers the paramount legal title to the improvements to be in him by virtue of the Sheriff's sale of Tobucksey County and the war-

ranty deed executed by said sheriff in pursuance thereof to him, Pusley and Richards, and the conveyance of Pusley and Richards to appellant.

It will further appear to this Honorable Court that it was pre-eminently proper to bring this action in a court of equity and that in fact it could have been brought and maintained in no other court for the reason that it seeks to have cancelled and set aside a mortgage or trust deed for fraud and want of authority to execute and to enjoin a sale of the property under and by virtue of said fraudulent mortgage or trust deed, to have decreed to plaintiff the legal title to the improvements and to possession of the same and the right of occupancy of the soil which must necessarily follow the right of possession of the improvements.

Where the subject matter of a suit belongs to a class over which a court of equity has jurisdiction the objection that the complainant had an adequate remedy at law not made until the hearing made in the appellate court comes too late.

Reynes v. Dumont, U. S. (La. Ed.) 32 p. 934.

Tyler v. Savage, U. S., (La. Ed.) 36, p. 82.

Brown v. Lake Superior Iron Co., U.S. (La. Ed.) 36 p. 82.

Brown v. Lake Superior Iron Co., U. S. (La. Ed.) 33, p. 102.

Campbell v. Haverhill, U. S. (La. Ed.) 39, p. 280.

Assignment of Errors 3, 4, 5, 6, 7 and 8, of the United Sattes Circuit Court of Appeals for the Eighth Circuit will be considered and argued together. Rec. pp. 140-141.

The authorities heretofore cited in this brief in support of the assignment of errors 1 and 2 of said United States Circuit Court of Appeals for the Eighth Circuit are herein referred to and it is contended by Appellant that said authorities fully sustain the position taken by Appellant in this case, that the United States Circuit Court of Appeals for the Eighth Circuit, erred in holding that it was necessary for the purchasers of this property in controversy at the sheriff's sale to pay cash for the same. As before stated, when the property became forfeited to the Choctaw Nation, as is fully shown by authorities cited, defendants lost all interest in the properyt, and when the property was sold the Nation was satisfied and defendants could not raise any objection as to the sale or payment. At the time this action was filed the United States Court in the Indian Territory had full jurisdiction of the parties and the subject matter.

The United States Court of Appeals for the Indian Territory and the United States Circuit Court of Appeals for the Eighth Circuit, have both rendered opinions in this case, and each Court has decided the case on a different proposition of law. The United States Court of Appeals for the Indian Territory held in its opinion, that the Indian statute under which the sale was made, was null and void, and unconstitutional, practically holding by implication, that if the statute

had have been valid, the sheriff's sale would have been binding and Plaintiff would have acquired a good title by the purchase.

The United States Circuit Court of Appeals for the Eighth Circuit held in its opinion that the sale was void for the reason the purchaser did not pay cash for the property, thus admitting in its opinion that the Indian statute under which the sheriff made the sale, was a valid statute, and constitutional, and if said purchaser at sheriff's sale had have paid cash for the property as the statute provided, that they would have acquired good title.

Thus we find two Appellate Courts practically holding contrary to each other on two main propositions of law in this case.

We submit as a second proposition of law, that the Choctaw statute under which the sale was made, is constitutional and valid.

Hockett v. Alderson, 58 S. W. R. p. 667.

Hockett v. Alderson, 110 Fed Rep. 910.

Thebo v. Choctaw Tribe of Indians, 13 C. C. A. p. 519.

It is further submitted by Appellant that the sale made by the Indian sheriff and ratified and accepted by the Chief and Council, was absolutely binding upon the Choctaw Nation, and gave Appellant a good and sufficient title upon which to base this action, and that no one can raise any objection to the sale except the Choctaw

Nation, and said Nation is satisfied and has executed its deed for the property, and desires that the Appellant secure possession of the same.

It is contended by Appellant that no judicial sale can be set aside for irregularity, unless the party seeking to set aside said sale has a vested right. And defendants in this case having no vested right in the aforesaid property, the same being forfeited to the Choctaw Nation, Appellant's action is complete and must prevail in this case.

It is therefore; respectfully submitted: That the judgment of the United States Court for the Central District of the Indian Territory, the United Staes Court of Appeals for the Indian Territory, and the United States Circuit Court of Appeals for the Eighth Circuit, are erroneous for the errors heretofore assigned and should be reversed, and the relief sought in Complaintant's bill granted.

Respectfully,

CHESTER HOWE,
GEORGE R. WALKER,
W. N. REDWINE,
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J. O. POOLE,
Attorneys for Complainant and Appellant.

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JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

October Term, 1906.
No. 140.

W. A. WALKER, Executor of the Estate of W. H. ANSLEY, Deceased, Appellant.

vs.

J. W. McLOUD, Trustee, and FRANCIS I. GOWEN, Receiver, of the Choctaw Coal and Railway Company, Appellees.

REPLY BRIEF FOR APPELLANT.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

CHESTER HOWE,
W. N. REDWINE,
GEORGE R. WALKER,
PRESLIE B. COLE,
J. O. POOLE,
Attorneys for Appellants.

IN THE

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REPLY BRIEF FOR APPELLANT.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Appellees in their brief, filed in this action, abandon the allegation set out in their answer, wherein they claim that the money used by Chadick in the erection of the buildings in controversy was used by him without the knowledge and consent of the officials of the Choctaw Coal & Railway Co., and claim that said company ought to have an equity in the building for the amount of money expended by Chadick in the erection of said buildings. That part of defendant's answer alleging that Chadick used the money for the erection of the buildings in this case, without the knowledge and consent of the officers of said Choctaw Coal & Railway Co., reads as follows: (R. 28-29): "For further answer herein defendants allege the truth to be that prior to the execution

of the Deed of Trust and erection of the house and buildings spoken of said Chadick was then manager of the Choctaw Coal & Railway Company and that he entered into an agreement, not as manager of said company, but personally, with Fritz Sittel, and one Edward Sittel, a citizen of the United States, by the terms of which agreement Fritz Sittel and Edward Sittel agreed that the said Chadick should receive one-third of the profits to be realized from the sale and rental of lands at South McAlister, the ownership of which was claimed by said Fritz Sittel, that said land was to be designated and treated as town sites and the said Chadick in compliance with his said personal agreement with the Sittels, and without the knowledge and consent of Hartshorn and Alderson, the beneficiaries named in said Deed of Trust, and without the knowledge of the Choctaw Coal & Railway Company, advanced a large sum of money belonging to the Choctaw Coal & Railway Company, for the erection of buildings aforesaid." The proof in this record shows that the Choctaw Coal & Railway Company through its President and Board of Directors, advised and directed the advancement of the money for the unlawful purpose of the erection of the buildings aforesaid. Fritz Sittel's deposition (R. 47), Chadick's deposition (R. 38), C. S. Jones' deposition (R. 45-46). The aforesaid evidence conclusively shows that the officers of the Choctaw Coal & Railway Company advised the advancement of the money aforesaid, and since the proof has been taken in this case appellees have abandoned the above theory set out in their answer as aforesaid, and it is now practically admitted by appellees that the buildings in controversy were built on the public domain by the Choteaw Coal & Railway Company in violation of the Act of Congress of 1888, that permitted the Choctaw Coal & Railway Company to build in the Indian Territory, and appellees do not now contend in their brief that they have any legal right or equitable right to said property, but state that they are in possession of the

same and that plaintiff in this action has no right to maintain this suit and appellees in their brief set up six reasons why plaintiff should not recover, none of which are substantial or valid reasons, or a valid defense to this case.

I.

First defense set forth by appellees reads as follows:

"This action is improperly brought against the parties defendant, for the reason that said parties had been discharged from their official duties and the property in controversy had passed to other hands when this action was brought." The question as to improper parties in this action was not raised in the trial court, and is raised for the first time in this court. This cannot be done. If there were improper parties to this action, it was the duty of defendants to raise this question in the lower court and if not raised there it is waived. Appearing and pleading to an action waives all misjoinder of parties. In further answer to the contention raised by appellees in their brief, that whatever equity the Choctaw Coal & Railway Company had in said property had passed to the purchasers of the franchise and properties of the Choctaw Coal & Railway Company, said purchasers being, to-wit, the Choctaw, Oklahoma & Gulf Railroad Company, has no merit whatever.

For the reason that the Choctaw Coal & Railway Company had no equity in said property and could not sell any, and furthermore, the receiver of the Choctaw Coal & Railway Company never undertook to sell the property in controversy and it was never legally in his possession, yet appellees say, on page 10 of their brief, as follows: "That whatever equities the Choctaw Coal & Railway Company had in this property by virtue of the improvements having been made with its money had passed to the Choctaw, Oklahoma & Gulf Railroad. This statement is misleading and J. W. McLoud,

who is attorney in this case, and was attorney for the Choctaw Coal & Railway Company at the time said company went into the hands of the receiver, and was trustee in the Deed of Trust, well knows that the above statement is not a fact, and is calculated to mislead the court, and that said property was never sold by the receiver nor treated as an asset of the Choctaw Coal & Railway Company, and that he, McLoud, as aforesaid on the 27th day of November, 1895, advertised as trustee the property in this action to be sold on the 30th day of December, 1895 (R. 19. Exhibit C.) This was about a year after the receiver had sold the property and franchises of the Choctaw Coal & Railway Company, yet McLoud, with full knowledge of these facts, would now try to procure this court to believe that the property in controversy was sold by the receiver, which he knows was not a fact. The purchasers of the property of the Choctaw Coal & Railway Company were expressly prohibited from acquiring any interest in the house and buildings situate off the right of way at South McAlister, I. T., which is the property in this action. (R. 58.) The property of the Choctaw Coal & Railway Company sold by the receiver is itemized (R. 75 to 101.) None of the property in controversy is contained in the list of itemized property sold by the receiver, and it could not be, and defendants admit in their answer that the property in controversy was in the hands of the trustee on December 13, 1895, when suit was filed in this action and that the same had never been disposed of before that time. The reason the receiver was made a party was because he had associated himself with the trustee in the control and completion of some of the buildings sued for in this action, and on June 24, 1895, when the Indian Sheriff sold the property in this action, the receiver in case 969, in connection with others, undertook to enjoin the sheriff's sale of the aforesaid property (R. 72.) This was about a year after said receiver had been discharged. However, the facts show in the injunction case

that the sale was made before the injunction was granted, and appellees have abandoned in their brief any defense made on that point as set up in their answer, and it will not be necessary to reply to that question further. The above facts set forth the reason why the receiver was made a party and defendants filed answer in this case and raised no objection as to improper parties and appellees could not raise that question now, and if they could, it would not be determinative of any issue in this case, as J. W. McLoud, the trustee, is a proper party and is before this court. This fully disposes of the first question raised by appellees.

II.

Second defense raised by appellees:

In answering the second defense raised by defendants, will say that this contention has been fully answered in appellant's brief, page 90. There is absolutely nothing in appellees contention on this point. It has been raised for the first time in their brief. If raised at all it must be raised in the trial court, not for the first time in the appellate court. Reynes vs. Dumont (La. Ed.) 32, p. 934. This suit was properly brought as it was a suit to enjoin a sale under a fraudulent Trust Deed, to cancel said fraudulent Trust Deed and give plaintiff possession of said property, and the suit could not have been brought in another court.

III.

Appellees in third defense state as follows:

"The statute of the Choltaw Nation did not authorize the sale made by Wm. Ansley, as deputy sheriff of Tobucksy county. Under the circumstances disclosed by the Record." Appellees say that the Choctaw statute did not authorize the sale of said property by said Indian sheriff, as disclosed by the Record, and appellees further say that said Choctaw sta-

tute is ambiguous and they undertake to give a construction of said Statute favorable to their case and against the construction placed on the Choctaw statute by the Indian authorities. Indian laws should be liberally construed and construed by the higher courts, according to the construction placed upon them by the Indian authorities themselves, when the Indian statute is not inconsistent with the Constitution, treaties and laws of the United States. The Indian statute under which the aforesaid sale was made being a statute not inconsistent with the Constitution, laws and treaties of the United States, should be construed by the courts according to the construction placed thereon by the Indian authorities. The Indian statute under which this sale was made was passed in 1888, by the Choctaw council. At that time there were some white people, who had built upon the public domain of the Choctaw nation, without authority of law and the statute was passed for the purpose of giving these people thirty days in which to sell and dispose of the improvements to some citizen of said nation, and to prohibit others from building on the public domain of said Choctaw Nation, and to give the Choctaw Nation authority to sell all property built on the public domain in the future in violation of law. Said statute gave the Choctaw authorities the right to sell property which had been forfeited to the Choctaw Nation by non-citizens, after advertising the same thirty days, and after the sale of said property, if the intruder refused to vacate the property the Choctaw sheriff would report that fact to the Chief, who would report the intruder to the United States Indian Agent, and ask the Indian agent to remove said intruder out of the nation. The construction placed on the statute as aforesaid, by counsel for appellees in this case, is contrary to the construction placed upon said Act by the Indians themselves. The Indians have full power and authority of self-government given them under the treaties and laws of the United States; said Indian

tribe had a perfect right to construe their own laws and the construction placed upon this Act by the Indian authorities is a proper construction, and it has been the policy of Congress, in dealing with the Indian tribes, to give due force and effect to the usages and customs of the Indian laws as construed by the Indians themselves under Act of Congress, June 10, 1896 (29 Stat. 321, 339).

Congress directed the Commissioners of the Five Civilized Tribes, that in passing upon the citizenship case of said tribes they should give due force and effect to the laws, usages, and customs of said tribes. The sale made by the Indian sheriff of the property in this action was strictly in accordance with the construction of the Choctaw statute, under which said sale was made, and according to the construction placed thereon by the Indian authorities. Said statute provides that where noncitizens have unlawfully built improvements on the public domain that the sheriff of each county shall advertise and sell the same within thirty days, to some citizen of the Choctaw Nation, and should said noncitizen refuse to deliver possession of said property that the sheriff shall report his action to the principal Chief of said nation, and said Chief shall have the intruder removed by the United States Indian agent. While the Choctaw statute says that the purchaser shall pay cash, this means that cash shall be paid for said property, when the intruder is removed, and possession is delivered to the purchaser, and it does not mean that cash shall be paid on the day of the sale, but the deeds are always executed on the day of the sale, which conveys a valid title from the Choctaw Nation to the purchaser of said property, and the property is paid for by the purchaser as soon as he obtains possession of said property, either by the nation or otherwise. This has been the construction placed on the Choctaw statute by the courts of the Choctaw Nation and by the Chief and other authorities, and it has also been the usage and the custom of

the Choctaw Nation since the statute was passed, in 1888. By reading the Choctaw statute, in regard to payment for the property when the same is sold, it is not just clear as to whether the payment should be made at the time of the sale or when possession of said property was obtained by the purchaser, but in order to ascertain the proper construction it must be construed according to the construction placed thereon by the Indian authorities, which has always been that payment is to be made when possession has been obtained, although the deed is executed when sale is made, and it is considered a valid sale from the date of the deed, and a sale for cash. In the case at bar deeds to the aforesaid property were executed on the day of sale by the nation to the purchasers, and payment was to be made when the purchasers obtained possession, which was a cash sale. This was in strict compliance with the Choctaw statute as construed by the courts of the Choctaw Nation, by the Chief of said nation, and it was the custom and usage of said nation. In sales of this kind it was usual and customary, and according to Choctaw statute for the purchase of the property to give to the sheriff making the sale some memorandum in writing showing how much he was to pay upon obtaining possession of said property. This memorandum was held by the sheriff, or his successors in office, until purchaser of said property obtained possession of the same, for it was well known that the purchasers of said property would likely not get possession of the same unless the Chief of the nation took action in his behalf, and assisted him through the United States Indian agent, or through the United States Court, after same was established in 1889 in the Indian Territory. Before the United States Court was established in the Indian Territory it was proper to report the intruder to the Indian Agent, for his removal, but after the United States Court was established in the Indian Territory, in 1889, as aforesaid, proceedings could be

had in said court to remove said intruder from the property and both the United States Indian agent, and the Untied States Court, had concurrent jurisdiction, and in the case at bar, proceedings were commenced in the United States Court, at South McAlister, for possession of said property, which was proper and right, and the Choctaw Nation assisted the plaintiff in the prosecution of this action, as it was its duty to do. Under the Choctaw laws, not only was the sale made by the Indian sheriff and the payment, according to the law of the Choctaw Nation as construed by the Choctaw authorities, but the sale of said Indian sheriff and the payment therefor was confirmed by the Chief of the Choctaw Nation. Said deputy sheriff states in his testimony (R. 50), that he made a full report of the sale and payment of said property to the Chief of the Choctaw Nation immediately after same was made, and that said Chief ratified and confirmed all his actions as to the sale and payment and directed him to employ counsel to represent the nation to assist the plaintiff in obtaining possession of said property, and that he at once employed lawyers to assist the plaintiff in obtaining possession of said property. The Chief was the head of the tribe and the executive officer and he had full power to see that the laws were properly executed. He was given this power under the Constitution of the Choctaw Nation. The Chief was directed, under Act of the Choctaw Council, approved Nov. 14, 1890 (R. page 7,) to employ counsel to represent the nation in any matters of interest to the nation that might come before the United States Court. After the Chief of the Choctaw Nation had received the report of the deputy sheriff as to the sale and payment of the property in controversy. Said Chief, when the council convened, about three months thereafter, made a full report to said Choctaw Council, as to the sale of said property and the payment therefor, and reported every action and detail of the transaction to the Choctaw Council, and the Choctaw Council, by special Act, ratified

and confirmed all of the acts of the deputy sheriff, as to the sale and payment, and directed the Chief of the Choctaw Nation, by special Act, to employ attorneys to further assist the plaintiff and to represent the Choctaw Nation in assisting plaintiff in obtaining possession of the property in controversy. This Act was passed October 30, 1895. Thus the Chief of the Choctaw Nation, and the legislative council, ratified and confirmed each and every act of the Indian sheriff as to the sale of said property and the payment therefor, for the same was in accordance with the laws and customs of the Choctaw Nation. (The above Act referred to on page 60, in Record, shows in the title of said act that the same was approved October 30, 1890. This is a typographical error. The proper date of the Act, when approved, was October 30, 1895, as shown at the bottom of said record page.) The sale was not only made in accordance with the Choctaw law, but the sale was confirmed and ratified by the Chief of the Choctaw Nation and the Council and it could not be made more valid and binding, and the sale was sufficient to convey title under the Choctaw Nation, and this court has held, in the case of McGuire vs. Blount, 199 U. S., page 142, that where a sale is made under a foreign system of laws that the sale should be construed according to the construction placed thereon by the authorities who made the same. The facts in the said case show as follows: This was a case for possession of land in the State of Florida, when the State of Florida belonged to Spain. A man by the name of Rivas had a will made to him by a man by the name of Morales, of Spain. After Morales' death, the will was probated, which was the 2nd day of May, 1808. Said will bequeathed unto Rivas a certain tract of land, in Florida. After the probation of said will the land was sold and the sale approved by the Civil and Military Governor of Florida. Caro and others bought said property, and made sale thereafter, to other parties and some 85 years afterwards the heirs of Rivas

filed suit for a portion of this property, claiming that the sale of said property, when made, was irregular, and not according to the law and that the same did not convey any title. The court, in passing upon the question, states as follows: "Various technical objections have been urged as to the regularity of the proceedings. Some of these might possibly have availed had they been urged as objections to the regularity in the forum where they were had, but it is to be remembered that we are here dealing with proceedings 85 years ago, under a foreign system of laws, by which it was undertaken to convey title to the premises. Such proceedings are not to be scrutinized with the view to discover defects. They were sufficient in view of those who had undertaken to pass title to the lands under the Spanish system, and our court should have neither the right nor the disposition to upset such titles by a nice examination of the regularity of the proceedings. Every presumption is in favor of the authority and the authenticity of such proceedings." Cases cited in opinion Strother vs. Lucas, 12 Pet. 410-438 6 Pet. 691, 927. If this decision is to be followed, then we must construe the Choctaw statute according to the construction placed thereon by the nation.

IV.

Fourth defense raised by appellees in the brief reads as follows:

"Such sale was a nullity because by force of the Choctaw statute and of the proceedings thereunder it was sought to adjudicate matters and issues of which only the courts of the United States in the Indian Territory had jurisdiction."

The above defense raised by appellees is so grossly foreign to the issues raised in this case that it scarcely needs reply. The Choctaw Nation in regard to the sale of the property, proceeded under the Choctaw law, according to

the Choctaw statute and was the proper procedure for the Choctaw Nation to dispose of the property that had been forfeited to said nation by an intruder. Appellees have set out in their brief, Article 7, of the treaty of 1855, and Article 43, treaty of 1866, and sections 2118 and 2147, Revised Statutes of the United States, and various Acts of Congress, establishing courts in the Indian Territory, and appellees further state, "that there were a certain class of persons not members of the Indian tribe who could live within the limits of the tribe, occupy lands and own improvements thereon." While certain classes of persons were permitted to live in the Indian Territory under the treaties aforesaid, such as persons employed by the United States Government, persons trading in the Indian country under licensed traders from the proper authority of the United States, and such other persons as might be permitted by the Choctaws and Chickasaws, with the assent of the United States Indian agent, yet these persons were limited in their rights in the Indian Territory, and while they were permitted to remain in the Indian Territory and were not subject to removal as an intruder, they were not permitted to open up town-sites on the public domain in the Indian country, and were not permitted to speculate in the public domain of the Choctaw Nation, or build houses and improvements on the public domain. In violation of the treaties and laws between the United States and the Indian tribes, the Choctaw Coal & Railway Company was also permitted to remain in the Indian country, under the Act of Congress and was permitted to build and own improvements on its right of way, but said Choctaw Coal & Railway Company was prohibited by Act of Congress from going off its right of way and prohibited from taking possession of the Indian lands, or placing buildings thereon, and when said railway company violated the Act of Congress and went off of its right of way upon the public domain of the Choctaw Nation, and erected buildings

thereon, said company forfeited all interest it had in said buildings to the Choctaw Nation and said buildings then and there became the property of said nation. Appelles say in their brief, on page 23, at the bottom, as follows: "In the case at bar it appears in the record that the improvements in question were made by a railroad company, operating a line of road in the Territory, by virtue of a lease made under contract of its manager, Edwin D. Chadick and two citizens, Fritz and Melvina Sittel." There is absolutely no proof in the record that the improvements in question were made under lease contract with Chadick, the manager of the railroad. The written instrument executed by Sittels and wife was a fraudulent Deed of Trust, for a pretended loan of money, which money was never borrowed. Testimony of Sittels (R. 48). Said fraudulent Trust Deed was a subterfuge and fraud upon the Choctaw Nation, and invalid. The Choctaw Coal & Railway Company knew it could not build or own improvements off its right of way, and by conspiring with Sittels and wife, in the execution of the fraudulent Trust Deed, said company could not do indirectly what it could not do directly. This fully disposes of this defense.

V.

The fifth defense raised by appelles in their brief reads as follows: "Such sale is nullity because the Choctaw statute and proceedings thereunder were in violation of the due process clause of the United States Constitution. It will not be necessary to reply to the due process clause of the Constitution of the United States raised by the appellees, as the same has been fully discussed in appellants brief, on pages 53 to 63, inclusive.

VI.

Sixth defense raised by appellees reads as follows: "Such sale is a nullity and ineffectual to pass any right to the plaintiff because of the failure of the officer to comply with the terms of the Indian statute, because under the general rules of law of the inadequacy of the construction and the substantial fraud depending upon the sale." This defense has been fully answered in appellant's first brief and also in the first part of this brief, as before said, when the property in controversy became forfeited to the Choctaw Nation that the sale of the Indian sheriff and the execution of the deeds by the nation made a complete transfer of title to the property in this action, and the same is sufficient to sustain an action of ejection or any other action. Appellees, in the discussion of this case, under defense sixth of their brief, and under opinion rendered by the Court of Appeals for the Eighth Circuit, set out in defendants' brief, and also of opinion of Commissioners of Indian Affairs, show that said opinions are based on cases where there were vested rights and not on questions of forfeiture. In the case at bar no vested right existed in the Choctaw Coal & Railway Company and no involuntary alienation took place under the sale. The prohibited Act of Congress prohibited said Choctaw Coal & Railway Company from building off its right of way; [redacted], the sale and alienation of the property was voluntary on the part of the nation. The property belonged to the nation and it voluntarily sold the same, under its laws and customs, to one of the citizens of the said nation. Nowhere have appellees been able to show in their brief, by citation of authorities or otherwise, that a sale made of property that had been forfeited to the government, was not a valid sale. Appellees have abandoned the theory of their case as alleged in their answer and have undertaken to make new issues in the brief in this case, not

made in the pleading, and are now standing purely on the defense, without any claim or right to the property in question. They admit that they are trespassers, in possession of said property without any right or title or interest, and that they are there in violation of law.

Appellants claim that a more perfect title could not be secured from the Choctaw Nation and the defense not having any vested rights cannot complain.

It is respectfully submitted that the appellant is entitled to recover in this action and that the decisions of the lower courts should be reversed, and the relief granted as prayed for in appellant's complaint.

Respectfully,

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Attorneys for Appellants.

FILE COPY.

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1906.

NO. 140.

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W. A. WALKER, Executor of the estate of W. H. ANSLEY, deceased, Appellant

vs.

J. W. McLOUD, Trustee, and FRANCIS I. GOWEN, Receiver Appellees.

BRIEF FOR APPELLEES.

Appeal From the United States Circuit Court of Appeals for the Eighth Circuit.

JOHN W. McLOUD,
CHARLES B. STUART,
Attorneys for Appellees.

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1906.

NO. 140.

W. A. WALKER, Executor of the estate of
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vs.

J. W. McLOUD, Trustee, and FRANCIS I. GOWEN, Receiver
Appellees.

BRIEF FOR APPELLEES.

Appeal From the United States Circuit Court of Appeals for the Eighth Circuit.

The Choctaw Coal and Railway Company was authorized by Congress to construct lines of railway through the Indian Territory and to acquire rights of way of prescribed width. Edwin D. Chadick and acquire rights of way of prescribed width. Edwin D. Chadick was the general manager of such company. Conceiving, as he states in his testimony, that it was necessary for the company to house its employees, and on this accouat to occupy land not on the right of way, he entered into a contract with Fritz and Melvina Sittle, the former having the rights of Choctaw citizenship by marriage, the latter by blood, under which houses were to be erected on lands to which the said Fritz and Melvina Sittle were entitled

to the right of occupancy under the Choctaw laws, with other stipulations in such contracts not necessary now to be mentioned. Extensive improvements under this contract were erected on these lands, now constituting a part of the townsite of South McAlester, the money for such improvements, according to one phase of the evidence, being advanced by said Chadick from the funds of the Choctaw Coal and Railway Company without knowledge or authorization on the part of the proper officers of such Company, being advanced according to another phase of the testimony, with such knowledge and authorization . In the instrument between Chadick and the Sittels it was recited that the money advanced came from Messrs Hartshorne and Alderson, and the mortgage to secure them was contained in this instrument. The proof shows that the money did not come from them but was the money of the Company, advanced without the knowledge of its officers, as above stated. The Choctaw Company being insolvent, receivers were appointed by the United States Court in the Territory and its property sold to a new corporation known as the Choctaw, Oklahoma & Gulf Railroad Company. Proceedings were had touching the improveemnts built with the money of the Choctaw Coal and Railway Company, as aforesaid, in the United States Courts in the Territory, which will be adverted to hereafter. While this status was yet existing, William Ansley, deputy sheriff of Tobucksy County, Choctaw Nation, Indian Territory, by virtue of a statute of the Choctaw Nation not providing for a hearing in court or legal proceedings of any kind, sold for a pretended consideration of $270.00 to W. H. Ansley certain property in the deed to said Ansley fully described and set

out (R. 20,) and in consideration of a pretended consideration of $70.00 sold other property on said date to one James Pusley, which property is in his deed to said Pusley set out and described (R. 21,) and on the same date for a consideration not stated sold to E. T. Richards other improvements in the deed to said Richards described (R. 15-18). On December 9, 1895, for a recited consideration of $1.00 James Pusley conveyed the property purchased by him to the plaintiff W. H. Ansley. On the same day E. T. Richards, for a recited consideration of $1.00 conveyed the property purchased by him to the plaintiff W. H. Ansley (R. 23, 24,) all of this property being improvements erected with the money of the Choctaw Coal & Railway Company, as above detailed. In point of fact, according to the testimony of W. H. Ansley, neither he nor Richards, nor Pusley, paid anything in cash upon their bids, but gave their notes for the amounts of their respective bids with the understanding that the notes were to be paid when they were put in possession by the Nation (R. 56), or, in the language of William Ansley, deputy sheriff. who made the sale, "I accepted notes to the sheriff and his successor in office for said amount, conditioned that the same be paid as soon as the purchaser was put in possession by the Nation or obtained possession otherwise, which notes have been turned over to the present sheriff of Tobucksy County." (R. 50.)

W. H. Ansley, the plaintiff, further testifies that the consideration from him to Pusley and Richards for conveying their purchase to him was $1.00, with the understanding that he was to do what was right about it, because they knew it was a lawsuit, and he was to pay them whenever it was settled. (R. 56.) The improvements

claimed to have been acquired by plaintiff through this sale cost $85,957.04 (R. 31-32.) One of the buildings, known as the Kali Inla Building, purchased by plaintiff at this sale was, in his opinion, of the market value of $30,000 or $40,000, and the amount of his bid on this particular piece of property was $125.00 (R. 55.)

The argument against plaintiff's claim of right based upon the sale aforesaid presents the following contentions:

1. That this action is improvidently brought against the parties defendant for the reason that such parties had been discharged from their official duties and the property in controversy had passed to other hands when this suit was instituted.

2. That the complaint in this case is insufficient to confer jurisdiction upon a court of equity to remove cloud from title, because (a) it does not show that plaintiff has the paramount legal title, (b) nor that plaintiff is in possession of the premises in controversy, (c) but does show that the defendants are in such possession.

3. That the statutes of the Choctaw Nation did not authorize the sale made by William Ansley, as deputy sheriff of Tobucksey County, under the circumstances disclosed by the record.

4. That if the Choctaw statute authorized the things done by William Ansley, deputy sheriff, in making the sale, then such statute and the proceedings thereunder are nullities, because by force of the Choctaw statute and of the proceedings thereunder it was sought to adjudicate matters and issues of which only the courts of the United States in the Indian Territory had jurisdiction.

5. That if the Choctaw statute authorized the sale as made,

then such sale is a nullity because the Choctaw statute and the proceedings thereunder are in violation of the "due process" clause of the United States Constitution.

6. That if the statute authorized the sale and is constitutional, such sale is a nullity and ineffectual to pass any right to plaintiff (a) because of the failure of the officer to comply with the terms of the Choctaw statute, and (b) because, under general rules of law, of the inadequacy of the consideration and the circumstances of fraud attendant upon the sale.

I.

This action is improvidently brought against the parties defendant for the reason that such parties had been discharged from their official duties and the property in controversy had passed to other hands when this action was brought.

This action is brought against Francis I. Gowen as receiver of the Choctaw Coal and Railway Company under allegation of appointments of such Francis I. Gowen as receiver by the United States Court for the Central District of the Indian Territory, September 19, 1891 (R. 1); it is brought against J. W. McLoud as trustee acting under a certain deed of trust executed on the 23rd day of October, 1890, by Fritz Sittle and Melvina Sittle to Edwin D. Chadick, trustee, to secure the payment of $45,000, alleged to have been furnished and advanced by Charles Hartshorne and William A. Alderson of Philadelphia, Pennsylvania, and their associates, which sum had been expended in the erection of the houses and improvements in controversy (R. 16, 17,) it having been found by the United States Court for the Central District of the Indian Ter-

ritory, in a certain cause therein entitled Edwin D. Chadick, trustee, vs. The Receivers of the Choctaw Coal and Railway Company, that while said deed of trust declared that the money used in the construction of said houses was advanced by Chas. Hartshorne and William A. Alderson and their associates, no part of the same was advanced by the said Hartshorne or Alderson, neither of whom knew of the said deed of trust until long after its execution; that said Chadick while manager of the Choctaw Coal and Railway Company advanced money of said company to the amount of $85,597.04, which money was used in the erection of the houses mentioned in said deed of trust; that Hartshorne was the president and Alderson was the treasurer of the Choctaw Coal and Railway Company at the time of the execution of said deed of trust, that the same was given with the intent to secure the party actually advancing the money thereon to the amount of $45,000 with interest at 6 per cent from October 23, 1890; that on the 14th day of February, 1894, said Hartshorne and Alderson and said Choctaw Coal and Railway Company by its president appointed J. W. McLoud substitute trustee in lieu of said Chadick with the powers conferred by said deed of trust, which appointment was concurred in by J. W. Throckmorton and Francis I. Gowen, receivers of the Choctaw Coal and Railway Company; that said McLoud was in the judgment aforesaid declared to be the legal and proper trustee for the Choctaw Coal and Railway Company under said mortgage and deed of trust and as such trustee entitled to exercise all the powers conferred therein and thereby upon such trustee, etc. (18, 32) It is alleged in the complaint that McLoud, trustee, is about to sell and will on Mon-

day, December 30, 1895, sell the property sued for, except Lot 12 in Block 46 and the improvements thereon situated. Allegations of possession and control are made against the said McLoud as trustee and the said Gowen as receiver. Complaint was filed December 13, 1895. The record shows that on July 17, 1894, in cause No. 169, styled Langhorne Wister et al vs. Choctaw Coal and Railway Company et al., the United States Court for the Central District of the Indian Territory ordered the sale, on the 8th day of December, 1894, of all the property of the Choctaw Coal and Railway Company then in the hands of the receivers of said court unless the payment of certain indebtedness of the Company should be made before said date (R. 74), that by virtue of such order such property was sold on the 8th day of December, 1894, to George H. Earle, Jr., Sidney F. Tyler, Francis I. Gowen, George E. Kirkbride, Nicholas Thouron, a committee appointed by the stockholders and creditors of the Choctaw Coal and Railway Company (R. 60, 61;) that on the 11th day of December, 1894, such sale was confirmed (8,) the master commissioner who had made the sale being directed to receive within thirty days the balance of the purchase money, and upon payment thereof to execute and deliver in conjunction with the Choctaw Coal and Railway Company a deed for such property to the purchasers, the form of said deed being by such order directed and approved (R. 73;) that within the thirty days fixed the balance of the purchase money was paid and the deed executed, acknowledged and delivered as directed (R. 101, 102, 103;) on October 13, 1894, the proceedings of the special master commissioner were confirmed and approved and the execution and delivery to the purchasers of the

deed of conveyance of the property and franchises of the railway company was also approved, and possession of the railroad property and franchises was vested in said purchasers, and the receiver was directed to hand over and deliver to them the said railroad property and franchises, and was further ordered to pass his final accounts before the master with all convenient speed. (R. 103, 104.)

On the second day of March, 1895, in said cause it was adjudged by the court that such receiver be discharged as receiver and that this case be dismissed except for the purpose hereinafter stated. The decree reads:

"And it further appearing to the court that the purchasers of said property at judicial sale bought the same subject to the liabilities and idebtedness of the receivership, lawfully incurred and not satisfied out of the proceeds of said sale, and further subject to all executory contracts made by the receiver under the authority of the court, it is ordered, adjudged and decreed that the court reserves and retains jurisdiction of this cause, and over the property of said company which was sold to the purchasers thereof at judicial sale, for the purpose of determining in this cause all such claims, liabilities and demands, and for the further purpose of fully protecting said receiver against any liability on any claims or demands existing or to exist against him, and for the purpose of protecting those having lawful claims against the receivership. The liabilities thusassumed by the purchasers of said property are as follows: All lawful claims not barred by the statute of limitation against Edwin D. Chadick and Francis I. Gowen, as joint receivers, accruing between January 8, 1891, and August 28, 1891, inclusive

of both dates, which have not heretofore been paid. Second. All claims not barred by the statute of limitation against Francis I. Gowen as acting receiver between August 28, 1891, and June 14, 1893. Third. All lawful claims not barred by the statute of limitations against James W. Throckmorton and Francis I. Gowen, receivers, accruing between June 14, 1893, and April 21, 1894, inclusive of both dates. Fourth. All lawful claims not barred by the statute of limitations agaist Francis I. Gowen, sole receiver, accruing between April 21, 1894, and October 3, 1894.

"It is further ordered, adjudged and decreed by the court that the above entitled cause, being cause No. 196 on the Equity Docket of this court, be and is retained and kept open for the purpose of ascertaining and determining all claims, demands and liabilities against said receivership and against property that was in the possession of said receivers and surrendered by them to the purchasers thereof. All such claims, demands and liabilities shall first be presented to the Choctaw, Oklahoma & Gulf Railroad Company, and if not paid, or if amicable adjustment of the same cannot be had, within a reasonable time, persons presenting such claims or demands shall have the privilege and authority of presenting them to the court by intervention in the above entitled cause for the purpose of having the same ascertained and determined in and by such intervention proceeding, and any orders, judgments or decrees so rendered by the court in such proceedings may be enforced and shall only be enforced against the property of said railroad company to the same extent that judgment could have been enforced if said property had not been surrendered into the possession of said Choctaw, Oklahoma

& Gulf Railroad Company, or was still in the possession of said receiver. Such intervention proceedings must be filed in this cause in this court on or before the first day of January, 1895 and after that no further intervention shall be permitted in this cause, and the rights of all claimants who shall not on or before that date have commenced intervention proceedings to avail themselves of the remedies herein provided for their benefit shall cease and determine, and such claims shall be barred and shall not be a charge on the property of said company; provided that when any such intervention procedings are filed in this court, due and legal notice of the same shall be given to the said Choctaw, Oklahoma & Gulf Railroad Company.

"It is further ordered, adjudged and decreed that nothing in this decree contained is intended to affect or shall be construed as affecting the status of any pending or undetermined litigation in which the receiver of said company appears as a party, and such litigation may be continued to final determination in the name of the receiver, but for the use of the Choctaw, Oklahoma &Gulf Railroad Company, and at its cost and expense and with the right of that Company should it be so advised, to appear and be substituted in any such litigation." (R. 70, 71, 72.)

It thus appears that the receiver sued in this action had been finally discharged for many months prior to the institution of this suit; that whatever equities the Choctaw Coal & Railway Company had in this property by virtue of the improvements having been made with its money had passed to the Choctaw, Oklahoma & Gulf Railroad Company, a corporation liable to suit; that the rights

asserted in this action are not "claims of the kind on account of which the court retained jurisdiction of the receivership cause; that if the claim here asserted could by any possibility be regarded as falling within the class of those claims on account of which the court retained jurisdiction of the cause, then that this action is barred by the terms of the order, because it has not been maintained by intervention proceedings, as provided by the terms of said order.

After the discharge of a railroad receiver no action can be maintained against him where the property formerly in his custody has been transferred to a purchaser under an order of the court in foreclosure proceedings.

Planters' L. & T. Co. vs. Central R. Co., 7 Fed. Rep. 537.

Davis vs. Duncan, 19 Fed. Rep. 477.

New York Tel. Co. vs. Jewett, 115 N. Y. 166.

Bond vs. State, 68 Miss. 648.

Ryan vs. Hayes, 62 Tex. 42.

Brown vs. Gay, 76 Tex. 444.

This proposition undoubtedly disposes of this cause so far as the defendant Gowen is concerned.

It must have like effect as to the defendant McLoud, because plaintiff by specific pleading of instruments and allegation of fact discloses that its action against McLoud is by virtue of his holding the property under the trust deed for the benefit of the Choctaw Coal and Railway Company, in conjunction with and in subordination to the receiver of such company, Francis I. Gowen; that in this capacity and by virtue of this relation plaintiff brings this action against him jointly with said Gowen, whereas the records dis-

closes that long before the filing of this suit all rights of the Choctaw Coal and Railway Company in the property in controversy, by virtue of said deed of trust, had passed to the Choctaw, Oklahoma & Gulf Railroad Company, and that Gowen had been discharged as receiver.

II.

The complaint in this case is insufficient to confer jurisdiction upon a court of equity to remove cloud from title for three reasons: (a) it does not show that plaintiff has the paramount legal title; (b) nor that plaintiff is in possession of the property in controversy; (c) but does show that the defendants were in such possession.

This is an action in equity to acquire possession of property, to remove cloud from the title thereof, and to be quieted in the possession thereof. Before a party can maintain this action in a court of equity he must have the paramount legal title. Dick vs. Foraker, 155 U. S. 414; Holland vs. Challen, 110 U. S. 525; Frost vs. Spitley, 121 U. S. 557; Adoue vs. Strahan, 97 Fed. Rep. 691; Guarantee Co. vs. Delta Co., 110 Fed. Rep. 69.

It cannot be claimed for a moment that complainant had for or could acquire the paramount title to the land in controversy; such title was in the Choctaw and Chickasaw nations by virtue of a patent from the United States. The lands of these Nations are now in process of partition under acts of Congress and treaties made with the different tribes. The utmost rights in lands which complainant could acquire was a bare possessory or right of occupancy under the laws of the Choctaw Nation.

Plaintiff cannot maintain this action because it appears from

his complaint that he was not in possession of the premises in controversy. Dick vs. Foraker, 155 U. S. 414; Frost vs. Spitley, 121 U. S. 552, 55-6.

Finally, plaintiff cannot maintain this action because it appears from his complaint that the defendants were in possession, the action of ejectment being for plaintiff an entirely adequate remedy at law. Aduoe vs. Strahan, 97 Fed. Rep. 691; Davidson vs. Calkins, 92 Fed. Rep. 239; Whitehead vs. Shattuck, 138 U. S. 146; Hudson vs. Randolph, 13 C. C. A., 402; Fed. Rep. 216.

These principles are recognized and enforced by the Arkansas courts, whose decisions are persuasive because our practice act is drawn from that state. Thus in Brown vs. Bosquire, 57 Ark. 106, it is said: "The action to quiet title proceeds upon the fact of plaintiff's possession when suit is commenced, and the complaint always tenders that issue." And in Ashley vs. Little Rock, 56 Ark. 399, it is said: "It is well settled a court of equity has no jurisdiction to remove cloud on title against one in possession claiming adverse title."

It is true that by a statute of Arkansas enacted March 26, 1891, a bill to remove a cloud on title is authorized whether or not the complainant is in possession. (Ark. Stats. of 1891, p. 132.) This statute, and similar ones, have been held unconstitutional in the United States Courts. Adoue vs. Strahan, 97 Fed. Rep. 692. Whether this statute be constitutional or not is entirely immaterial in this controversy as it has never been put in force in this Territory by act of congress. Its enactment, however, confirms the position taken by the courts of Arkansas, prior to its enactment,

that a complainant can not have an action to remove cloud against a defendant in possession and claiming adversely.

III.

The statutes of the Choctaw Nation did not authorize the sale made by William Ansley, as deputy sheriff of Tobucksey County, under the circumstances disclosed by the record.

The Choctaw statute under which the sale by virtue of which plaintiff claims title was made is as follows:

"All non-citizens not in the employ of a citizen of the Choctaw Nation and not authorized to live in the Choctaw Nation under the provisions of existing treaty stipulations, who have made or bought improvements in said Nation, are hereby notified that they are allowed to sell their so-called improvements to citizens, and if such non-citizens fail to comply with this section, then it shall be the duty of the sheriffs of the counties in which such improvements may be located to advertise the same for sale within thirty days and sell the same to the highest Choctaw citizen bidder for cash, one-half of which shall be paid into their respective treasuries and the other one-half into the National Treasury, provided however that if any such non-citizen fail or refuse to deliver the possession of such an improvement, he shall be reported by the sheriff of that county to the principal chief and by said chief to the United States Indian Agent to take proper steps for the removal and prosecution of such offender under Sec. 2118 of the Revised Statutes of the United States; provided further, that the notice of sale shall be posted by the sheriff in three public places in his county, which shall be legal notice to all persons against whom this law may operate." (R. 59.)

It will be perceived at once that this statute is ambiguous. It provides for advertisement by the sheriff "for sale within thirty days." It further provides for notice of sale. It provides that any non-citizen might sell his improvements to citizens but does not provide within what time such sale should be made. It provides that if any non-citizen fail or refuse to deliver possession of an improvement he shall be reported by the sheriff of that county to the principal chief and by that chief to the United States Indian Agent. It does not state directly whether this delivery of possession should be before sale or afterward. This statute must be read in the light of the fact that the Indian Government could not proceed against a citizen of the United States directly, but only by request to the United States Indian Agent,. upon whom was conferred statutory power in the premises. Art. 7 of the Treaty of 1855 provides for the removal of intruders, not by the Choctaw authorities, but by the United States Agent. Art. 14 provides that the United States shall protect the Choctaws and Chickasaws from domestic strife, from hostile invasion and from aggression by other Indians and white persons not subject to their jurisdiction and laws. Section 2118 of the Revised Statutes of the United States confers upon the president power to take such measures and to employ such military force as he may judge necessary to remove any person from the Indian lands.

To read the provisos as requiring the sheriff before advertisement and sale to give notice to the non-citizen to deliver the possession of the premises, failing which he should be reported for removal, and in the event of his complying with this notice or being

removed by the agent, then to advertise the vacated improvements for thirty days and to sell same as required, is to give consistency to all the provisions of the law, to give meaning both to the requirement of advertisement and of notice, and to make the statute consistent with the removal statute of the United States. To place the other construction upon the statute is to assume that notice and advertisement mean the same thing; that the sheriff should sell the improvements without notice to the non-citizen to vacate the same, but should require him to vacate after the sale, and if he should then fail so to do report this fact to the Indian Agent, involving this absurdity, that the Indian Agent might find that the non-citizen came within some of the provisions of the law authorizing him to remain in the Territory and occupy land and might refuse to remove him, involving the further consequence that the sale of the premises before they had been vacated by the non-citizen or before removal by Agent would necessarily tend to bring the non-citizen into collision with the Indian authorities and with the purchasers at such sale, the very consequences which all laws and treaties with the Indians desired to avoid. The one construction has due regard for the power of the agent, in that it invokes his judgment upon matters finally to be determined by him before action by tribal authorities; the other authorizes tribal action in advance of any determination by the agent and with the possibility that such action might be rendered nugatory by the finding of the agent that the person was authorized to live in the Choctaw Nation under the provision of laws or treaties. The intention must be imputed to the Choctaw government to act in the enactment of Laws in accordance with

the constituted authority of the United States. All of these considerations lead irresistibly to the conclusion that the proper construction of this ambigious statute is that the Indian sheriff should give notice to the non-citizen of his purpose to sell and make demand for possession, upon the failure of such non-citizen to deliver the possession, to report him to the Indian Agent for removal and upon the vacation of the premises or upon such removal by the Agent to then sell the improvements after advertisement for thirty days.

If this construction be sound, then the proceedings of the Indian sheriff were entirely without effect, because it does not appear that notice was given or demand made of the defendants to deliver up possession of the property in controversy before the sale by the sheriff, or that they were reported to the Indian Agent as required by the statute.

IV.

Such sale was a nullity because by force of the Choctaw statute and of the proceedings thereunder it was sought to adjudicate matters and issues of which only the courts of the United States in the Indian Territory had jurisdiction.

Article 7 of the Treaty of 1855 between the United States and the Choctaw and Chickasaw Tribes of Indians was as follows: "So far as may be compatible with the Constitution of the United States and the Laws made in pursuance thereof, regulating trade and intercourse with the Indian Tribes, the Choctaws and Chickasaws shall be secured in the unrestricted right of self-government and full jurisdiction over persons and property within their respective limits, excepting, however, all persons with their property who

are not by birth, adoption or otherwise citizens or members of either the Choctaw or Chickasaw Tribe, and all persons not being citizens or members of either tribe found within their limits shall be considered intruders and be removed from and kept out of the same by the United States Indian Agent, assisted if necessary by the military, with the following exceptions, viz: Such individuals as are now or may be in the employment of the government and their families, those peacefully traveling or sojourning in the country or trading therein under license from the proper authority of the United States, and such as may be permitted by the Choctaws or Chickasaws with the assent of the United States Indian Agent to reside within their limits without becoming citizens or members of either of said tribes."

Article 43 of the Treaty of 1866 provides: "The United States promise and agree that no white person except officers, agents and employes of the government and of any internal improvement company, or persons traveling through or sojourning in said Nations or either of them, shall be permitted to go into said Territory, unless formally incorporated and naturalized by the joint action of the authorities of both Nations, into one of the said Nations or Choctaws or Chickasaws, according to their laws, customs or usages, but this article is not to be construed to affect parties heretofore adopted, or to prevent the employment temporarily of white persons who are teachers, mechanics, or skilled in agriculture, or to prevent the Legislative authorities of the respective Nations from authorizing such work of internal improvement as they may deem essential to the welfare and prosperity of the community, or be taken to inter-

fere with or invalidate any action which has heretofore been had in this connection by either of said Nations."

The effect of Article 51 of said Treaty is to leave in force all treaties and parts of treaties theretofore made not inconsistent with the Treaty of 1866.

Section 2118 of the Revised Statutes of the United States reads: "Every person who makes a settlement on any lands belonging, secured or granted by treaty with the United States, to any Indian Tribe, or surveys or attempts to survey such lands, or to designate any of the boundaries by marking trees or otherwise, is liable to a penalty of $1,000. The president may moreover take such measures and employ such military force as he may judge necessary to remove any such persons from the land."

Sec. 2147 of the Revised Statutes of the United States reads: "The Superintendent of Indian affairs and the Indian Agent and Sub-Agents shall have authority to remove from the Indian Country all persons found therein contrary to law, and the president is authorized to direct the military force to be employed in such removal."

It will be observed that under the treaty provisions certain classes of persons were permitted to live within the limits of the Choctaw and Chickasaw Nations, and necessarily to occupy lands therein. It will be recalled that the act under which this sale was made excludes from its operation all non-citizens not in the employ of a citizen of the Choctaw Nation and not authorized to live in the Choctaw Nation under the provisions of existing treaty stipulations.

In Section 6 of the Act of Congress of March 1, 1889, establishing a United States Court in the Indian Territory, it is provided, "That the court hereby established shall have jurisdiction in all civil cases between citizens of the United States who are residents of the Indian Territory or between citizens of the United States or any State or Territory therein and any citizen of or any person or persons residing or found in the Indian Territory, and when the value of the thing in controversy or damages or money claimed shall amount to one hundred dollars or more.

The act of May 2, 1890, provided that the United States court in the Indian Territory should have jurisdiction "in all cases on contracts entered into by citizens of any Tribe or Nation with citizens of the United States in good faith and for valuable considerations and in accordance with the laws of such Tribe or Nation, and such contracts shall be deemed valid and be enforced by such courts, and in all cases over which jurisdiction is conferred by this act, or may hereafter be conferred by act of congress; and the provisions of this act hereinafter set forth shall apply to said Indian Territory only.

Other provisions of said act read: "That no attachment shall issue against improvements on real estate while the title to the land is vested in any Indian Nation, except where such improvements have been made by persons, companies or corporations operating coal or other mines, railroads or other industries under lease or permission of law of an Indian National Council or charter or law of the United States; that executions upon judgment obtained in any other than Indian courts shall not be valid for the sale or convey-

ance of title to improvements made upon lands owned by Indian Nations except in the cases wherein attachments are provided for. Upon a return of nulla bona upon an execution upon any judgment against an adopted citizen of any Indian Tribe, or against any person residing in the Indian Territory not a citizen thereof, if the judgment debtor shall be the owner of any improvements upon real estate in the Indian Territory in excess of 160 acres occupied as a homestead, such improvements may be subjected to the payment of such judgment by decree of the court in which such judgment was rendered. Proceedings to subject such property to the payment of judgments may be by petition, of which the judgment debtor shall have notice as in the original suit. If on hearing the court shall be satisfied from the evidence that the judgment debtor is the owner of improvements on real estate subject to the payment of said judgment, the court may order the same sold and the proceeds, or so much thereof as may be necessary to satisfy said judgment and costs, applied to the payment of said judgment; or the improvement is of sufficient rental value to discharge the judgment within a reasonable time, the court may appoint a receiver who shall take charge of such property and apply the rental receipts thereof to the payment of such judgment under such regulations as the court may prescribe. If under such proceeding any improvement is sold, only citizens of the tribe in which said property is situated may become a purchaser thereof."

It appears from the foregoing review of statutory and treaty provisions:

(1) That there were classes of persons not members of a tribe

who could live within the limits of the tribe, occupy lands, and own improvements therein.

(2) That by treaty of 1855 the jurisdiction of the tribal authorities over the person and property of individuals not members of the tribe was expressly excluded.

(3) That by the provisions of the Revised Statutes of the United States the power to protect the tribal lands from encroachment by non-citizens was vested in the president of the United States and in the superintendent of Indian Affairs and agents and sub-agents.

(4) That the Act of Congress creating a United States court in the Indian Territory and enlarging its jurisdiction, enacted doubtless in recognition of the changed condition of affairs in the Indian Territory and the presence therein of hundreds of thousands of United States citizens, made an advance over all previous legislation in providing that the contract entered into by citizens of any tribe or nation and citizens of the United States under the conditions above set out should be valid and should be enforced by such courts. As the validity of the contract was a condition precedent to its being enforced by the court, it necessarily followed that the court acquired jurisdiction of causes growing out of such contracts in order to determine the validity of the same.

Such law further recognized that persons operating coal or other mines, railroads, or other industries might make improvements on Indian lands under lease, and that persons residing in the Indian country not citizens thereof might be the owner of improvements upon real estate which could be proceeded against according

to the procedure in such act set forth.

These statutes enacted in recognition of the charges taking place in the Territory, as before suggested, are in line with that policy of congress which has finally found expression in laws whereby non-citizens are not only permitted to hold and own the improvements made by them on lands in the Indian Territory within the towns, but by virtue of such improvements to acquire title in fee to such lands upon payment of a percentage of the appraised value thereof. These provisions not only reinforce the conclusion drawn from the provision of the treaty that the Indian authorities could not exercise jurisdiction directly or indirectly over the persons or property of individuals not members of the tribe, but establish further that right could be acquired in respect to such improvements which before these acts of Congress had not been recognized and that in regard to such rights jurisdiction to adjudicate and determine the same was conferred upon the courts of the United States in the Indian Territory. This is believed to be sound conclusion from these statutes, but it might be unsound and yet not impair the alternative contention that the Indian authorities did not have jurisdiction over rights or claims of non-citizens, but that its redress against these must be made by appeal to the proper authorities of the United States, viz. the President, the Commissioner of Indian Affairs, the Indian Agents and Sub-Agents.

In the case at bar it appears from the record that the improvements in question were made by a railroad company operating a line of road in the Territory by virtue of a lease made under a contract of its manager, Edwin D. Chadick, with two Choctaw citizens,

Fritz and Melvina Sittle. This contract, if valid, the United States court in the Indian Territory had power to enforce. The power to enforce it if valid necessarily drew with it jurisdiction to determine its validity. Whether this jurisdiction precluded the tribal authorities from making appeal to the Indian Agent for removal of trespassers upon its land is a question that need not be determined, for the conclusion seems to be irresistable that the executive authorities of the United States and the United States courts in the Indian Territory, separately or concurrently, had exclusive jurisdiction to determine the questions of the unlawful making of the improvements in question and that the act of the Choctaw Council, if it authorized the Indian sheriff to proceed against such improvements independently of the United States authorities, was an attempt to encroach upon jurisdiction not vested in the Choctaw authorities but vested in the United States authorities. If, however, the construction of the Choctaw act contemplated an appeal to the Indian Agent first and the sale of the vacated improvements by the sheriff after such vacation, then such act would have been within the power of the Choctaw authorities, and the consideration here urged sustain the argument heretofore made that this is the proper construction of the Choctaw Act.

V.

Such sale is a nullity because the Choctaw statute and the proceedings thereunder were in violation of the "due process clause" of the United States Constitution.

It has never been believed heretofore that a party could in this country be adjudged to be guilty by legislative act or have his guilt

determnied by an executive officer. It has been believed that no person could be deprived of property by assuming his guilt and visiting the penalties of the law upon him without a hearing, without judicial ascertainment of the grounds for forfeiture and without the right of making a defense. By Article 7 of the Treaty of 1855 the Choctaws were given the unrestricted right of self-government so far as might be compatible with the Constitution of the United States. By the Act of Congress of 1890, heretofore cited, it was provided that the Constitution of the United States should have the same force and effect in the Indian Territory as elsewhere in the United States. Apart from these provisions, it is believed that the Constitution of the United States was in force in the Indian Territory ex vigore, so far as the fundamental safeguards of personal and property rights were concerned, among which the provision that no person shall be deprived of life, liberty or property except by due process of law stands first.

The first objection to the Choctaw statute and to its enforcement by an executive officer is that it violates the implied limitations resulting from the division of government into three departments. The faculty of judgment is neither legislative nor executive, but judicial. The function of determining whether an individual has been guilty of an infraction of law and must suffer its penalties is a judicial function and cannot be exercised by a legislative body, nor be conferred by it on the executive branch of the government. Thus the federal constitution declares that "all legislative power herein granted shall be vested in a Congress of the United States," that the executive power of the United States shall be vested in a

President, and that the judicial power of the United States shall be vested in one Supreme Court and such inferior courts as Congress may from time to time ordain and establish. By the first of these provisions the President and the courts are prevented from making laws. By the second, congress and the courts are forbidden to usurp the functions of the executive. By the third, the courts would be justified in declaring invalid any act of congress or act or rule of the executive department which should amount to an attempted exercise of judicial power. Black's Constitutional Law, p. 79. Any act of legislation which undertakes to determine questions of fact or law as affecting the rights of persons or property properly the subject of litigation would be judicial in its character, and therefore invalid. Thus to ascertain that a deed to a private corporation is conditional, that here has been a breach of the condition and to enforce a forfeiture for breach are judicial functions which it is not within the competency of legislative power to exercise. Id. 80. Board of Education vs. Bakewell, 122 Ill. 339 (10 N. E. Rep. 378.) Although to a considerable extent the rules of evidence are under control of the legislature, it is not competent for that body to make a rule which shall in effect finally determine controversies and deprive the courts of their function. Thus a tax deed cannot be made conclusive of the facts in the controversy in which it appears. Id. 82. A statute and preclude the owner of the original title from showing its invalidity would be void, because not being a law regulating evidence but an unconstitutional confiscation of property. Cooley on Constitutional Limitations, 16 Ed. page 453 and authorities in Note 1. And a statute which should make a certificate or opinion of an of-

ficer conclusive evidence of the illegality of an existing contract would be equally nugatory. Id. 453. Young vs. Beardsley, 11 Page 93.

Furthermore, "a party cannot by his misconduct so forfeit a right that it may be taken from him without judicial proceedings in which the forfeiture shall be declared in due form. Forfeitures of rights in property cannot be adjudged by legislative act and confiscations without judicial hearing after due notice would be void as not being due process of law." Cooley, Constitutional Lim., 6th Ed. 444 and cases cited in foot note.

The congress it has been held has no power to protect parties assuming to act under the authority of the general government during the existence of civil war by depriving persons illegally arrested by them of all redress in the courts. Id. 445. Griffin vs. Wilcox, 21 Ind. 370, Johnson vs. Jones, 44 Ill. 142, Hubbard vs. Brainard 35 Conn. 563.

Furthermore, looking at the proceeding in this case as a proceeding in rem conducted by an executive officer, it lacks two things indispensable to the validity of such proceedure,—seizure of the property and notice to the owners, for it does not appear that the property was ever taken into custody by the officer or that he ever gave notice to the owners thereof to appear before him and show cause why such property should not be sold. In his work on Proceedings in Rem., Art. 42, page 54, Mr. Waples says: "Seizure is the initial step in proceedings against a thing. What arrest is in criminal prosecutions against a person seizure is in a prosecution against a thing. What citation is in a personal civil action, seizure

is in the **actio in rem** so far as it is notice to all interested. It is absolutely essential to the existence of the action, to the jurisdiction of the court, to the validity of the condemnation. Without seizure the change of title by forfeiture could not be judicially ascertained, as without due civil process a case of disputed title between two citizens could not be decided unless the process should be waived by the consent of the parties. In almost all actions against things the object of the complaint is to have the change of title by forfeiture declared and his rights thus arising decreed. Art. 43. Where the seizure is insufficient the regularity of the following proceedings will not avail to prevent the whole case from being inoperative, from being like a fabric without foundation which must fall to the ground. A defective seizure cannot be made effective without the repair of the defects. To cure it we must make it sufficient. The remedy must be administered to the seizure itself so as to make it whole. So long as it remains insufficient, no pleading or judicial order, nor even admission by the claimant which do not concede the legality of the seizure can lead to lawful condemnation of the thing. Let it be never questioned that proceedings in rem are void ab initio without seizure sufficient; that there is no reliable decision and can be none to that effect that insufficient seizure can be cured by any thing less than the making of it sufficient. To seize real estate notice of seizure must be served upon the tenant in possession. Id. 64.

In Chapter 8 he discusses the indispensability of notice, and how seizure supplemented by advertisement constitutes notice. In discussing jurisdiction of the court he says (page 120:)

"2. When seizure has been made and the res brought into court the power of the court is confined to the custody of the res, the sale of it when perishable (that its form may be changed to money), and to other necessary orders.

"3. When the libel has been filed and notice given, and the legal delay has expired (whether there has been any response to notice or not) jurisdiction to hear and determine the status of the res arises."

But it is contended that there is a kind of forfeiture not the result of judicial ascertainment, but inherent in the statute itself. It is true that in the case of Smith vs. The State of Maryland, 6 Cranch 283, it was held that an act of the State of Maryland confiscating the property of British subjects, followed by another statute appointing commissioners to preserve the British property confiscated and seized by the former law and declaring the said commissioners to be in full actual seizin and possession of all British property seized and confiscated by the said act, was upheld as a measure emanating from the war power, the confiscation act having been passed before the adoption of the Constitution. But in the case of Terrett vs. Taylor, 9 Cranch 42-43, the Supreme Court denied to the Legislature of Virginia the power by its act to repeal and revoke a former act of the Legislature of that State confirming to the church its rights to the church lands. And in the case of Fairfax vs. Hunter's Lessee, 7 Cranch 602, the Supreme Court, through Judge Storey, said: "It is incontrovertibly settled upon the fullest authority that the title procured by an alien by purchase is not divested until office found." He held therefore that notwith-

standing the acts of Virginia confiscating the property of British subjects and the grant of these lands by the State to Hunter, that the title of Fairfaxhad not been divested, and this decision was considered by Justice Johnson, who dissented, as overruling the case of Smith vs. Maryland, supra.

These cases, it will be perceived, relate to the confiscation of the property of an enemy, and yet even in such case, wholly inapplicable to the position of a citizen of the United States resident in the Indian Territory, the pronounced disposition of these earlier decisions was to require a judicial ascertainment of the fact by inquest of office or equivalent proceeding to consummate the forfeiture of property of an alien enemy. The legislation of congress providing for the confiscation of property of those engaged in rebellion always provided for judicial ascertainment of the fact. Even under this confiscation act providing for a hearing and a judicial determination of the grounds of forfeiture, there was in the case of Miller's Executor vs. United States, 11 Wall. 286, a strong dissent by Justice Field and Justice Clifford from the judgment of the court affirming the judgment of the lower court upon the ground that statutory proceedings in rem for the confiscation of the property of the parties charged to be guilty of certain overt acts of treason could not be maintained without their previous conviction for the alleged offenses, the property seized not having been rendered subject to forfeiture by guilty use in the course of war, but being proceeded against simply as the property of an enemy.

In the case of McVeigh vs. United States, 78 U. S. Rep. 259, which was a proceeding under the Confiscation Act to confiscate

certain real estate of the plaintiff in error, plaintiff in error by counsel interposed a claim and filed an answer. The attorney for the United States filed a motion that the appearance, answer and claim should be stricken from the files for the reason that the respondent was a resident of the City of Richmond, withir the Confederate lines, and a rebel. An order was made accordingly to the motion. Subsequently a decree pro confesso was taken. The Supreme Court said: "In our judgment the district court committed a serious error in ordering the claim and answer of the respondent to be stricken from the files. As we are unanimous in this conclusion our opinion will be confined to that subject. The order in effect denied the respondent a hearing. It is alleged that he was in the position of an alien enemy and hence could have no locus standi in that forum. If assailed there he could defend there. The liability and the rights are inseperable. A different result would be a blot upon our jurisprudnce and civilization. We cannot hesitate or doubt on the subject. It would be contrary to the first principles of the social compact and of the right administration of justice. Whether the legal status of the plaintiff in error was or was not that of an alien enemy is a point not necessary to be considered, because apart from the views we have expressed, conceding the fact to be so, the consequences assumed by no means follow. Whatever may be the extent of the disability of an alien enemy to sue in the courts of the hostile country, it is true he is liable to be sued and this carries with it all the means and appliances of defense."

So in the case of Lasere vs. Rochereau, 84 U. S., the property of the plaintiff in error was proceded against by an action upon

two mortgages. The property was taken into custody and returned on the notice of demand of payment made that plaintiff had left the city and state without leaving an agent to represent him. A curator ad hoc was thereupon appointed, and judgment was rendered against plaintiff in error. It appeared that at the time of the institution of hisproceeding he had been expelled from the city of New Orleans by military order, and that his absence from New Orleans was enforced and involuntary. The court said: "It is contrary to the plainest principles of reason and justice that any one should be condemned as to person or property without an opportunity to be heard. The point here involved was decided by this court in Dean vs. Nelson, 10 Wall. 172. It was there said, "The defendants in the proceedings, meaning the original proceedings, the appellees here, were within the Confederate lines at the time and it was unlawful for them to cross those lines. Two of them had been expelled from the Union lines by military authority and were not permitted to return; the other Benjamin May had never left the Confederate lines. A notice directed to them and published in a newspaper was a mere idle form. They could not lawfully see or obey it. As to them the proceedings were wholly void and inoperative. The case thus condemned is substantially the one before us."

The propositions contended for herein have existed immemorially in the law in England, and are expressed in the maxim that no man shall be condemned unheard. Thus a statute establishing a gas light company enacted that if any person should refuse or neglect for a period of ten days after demand to pay any rent due from him to the company for the supply of gas, such rent should be recov-

ered by the company or their clerk by warrant of a justice of the peace and execution thereunder. A warrant issued by a justice under this act without previously summoning and hearing the party to be distrained upon was held to be illegal, though summons and hearing was not in the term of the act, for a warrant is in the nature of an execution. It was said: "Without a summons the party charged has no opportunity of going to the justice, and a man shall not 'suffer in person or purse without opportunity of being heard.'" Painter vs. Liverpool Oil, Gas, Light Co., 3 A. & E. 433; Hammond vs. Bendyshe, 13 Q. B. 869. The Metropolitan Local Management Act, 1855, 18 and 19 Vict. Ch. 120, Sec. 76, empowered the vestry or district board to order or demolish a house where the builder had neglected to give notice of his intention to build seven days before his beginning to lay or dig the foundation. It was held that this enactment did not empower the board to demolish the building without first giving the party opportunity of being heard. For "that a tribunal which is by law invested with the power to affect the property of one of Her Majesty's subjects is bound to give such subject an opportunity of being heard before it proceeds, is a rule that is of universal application and founded upon the plainest principles of justice." Cooper vs. Monsworth Board of Works, 14 C. B. N. S. 180.

The decisions were made in England where the theoretical supremacy of Parliment and its power to do anything by act of legislation is asserted. It is a part of the immemorial common law of England, maintained even when the perogative of the crown was at its height, that the subject could not suffer deprivation of prop-

erty at the instance of the crown except as the law should be enact and appropriate legal proceeding declared. Thus Mr. Blackstone in discussing the methods of redressing such injuries as the crown may receive from the subject says: "Such is that of inquisition, or inquest of office; which is an inquiry made by the king's officer, his sheriff, coroner, escheator, **virtute officii,** or by writ to them sent for that purpose, or by commissioners specially appointed, concerning any matter that entitled the king to the possession of lands or tenements, goods or chattels. This is done by a jury of no determinate number, being either twelve, or less, or more. As, to inquire whether the king's tenant for life dies siesed, whereby the revision accrues to the king; whether A., who held immediately of the crown, died without heirs, in which case the land belong to the king by escheat; whether B. be attainted of treason, whereby his estate is forfeited to the crown; whether C. who has purchased lands, be an alien, which is another cause of forfeiture; whether D. be an idiot, **a nativitate,** and therefore, together with his lands, appertains to the custody of the king; and other questions of like import, concerning both the circumstances of the tenant and the value or identity of lands. . . . . With regard to other matters, the inquests of office still remain in force, and are taken upon proper occasions; being extended not only to lands, but also to goods and chattles personal, as in the case of wreck, treasure trove and the like; and especially as to forfeitures for offenses. * * * * These inquests of office were devised by law, as an authentic means to give the king his right by solemn matter of record, without which he, in general, can neither take nor part from anything. For it is a part of

the liberties of England, and greatly for the safety of the subject, that the king may not enter upon and seize any man's possession upon bare surmise without the intervention of a jury." 3 Blackstone, p. 258, 259.

The proposition is believed to be unqualified and absolute, that the power does not exist anywhere within the territorial limits of the United States to take from an individual property rights without a hearing by mere force of statutory enactments. Certain summary proceedings permitted to a government in the exercises of its necessary powers do not contravene this proposition. Thus it is permitted the State or the sovereignty to collect taxes by summary proceedings and to have writs of execution issued against officers of the government for balances of indebtedness. It is permitted the government in the exercise of its police power to destroy property to arrest a fire, or to prevent the spread of disease, and cases have arisen in which the summary destruction of property seized while being used for criminal purposes has been upheld as proper exercise of the police authority, as in the destruction of gambling paraphernalia and fish nets unlawfully spread in the streams. These cases however relate to the exercise of particular powers of government necessarily involving expeditious modes of procedure, and are not the foundations of any general doctrine as to the power of the state to take the property of the individual through the mere exertion of the legislative power.

The case of Atlantic & Pacific Railroad Co. vs. Mengus, 165 U. S. 413, cited by appellant, decides that when the United States grants public lands upon condition subsequent, they have the same

right to re-enter upon a breach of the condition which a private grantor would have under the same circumstances, which right is to be exercised by legislation, and is based upon the elementary learning that the title of the grantor in case of the breach of condition subsequent is not revived by the mere happening of the breach but only revives upon his making entry or doing that which is its equivalent, and such equivalent act of entry where the sovereignty is the grantor can only be made by legislative declaration.

The same principle is involved in United States vs. De Repentiguy, 72 U. S. 646. Other cases cited by appellant are distinguishable upon the grounds so obvious and palpable that they do not require consideration.

VI.

Such sale was a nullity and ineffectual to pass any right to plaintiff, (a) because of the failure of the officer to comply with the terms of the Indian statute; (b) because, under the general rules of law, of the inadequacy of the consideration and the circumstances of fraud attendant upon the sale

It will be observed that the Choctaw statute requires the sheriff to sell to the highest Choctaw citizen bidder for cash, one-half of which should be paid into their respective treasuries and the other half into the national treasury. It is shown by the testimony of William Ansley, who made the sale, and of W. H. Ansley, his son, the plaintiff, that no money was paid at the sale at all, that the deputy making the sale accepted notes to the sheriff and his successor in office to the amount of the bids, conditioned that the same should be paid as soon as the purchasers were put in possession by

the Nations or obtained possession otherwise.

The claim that this was a sale passing title to the purchasers seems absolutely childish, but as the contention is pressed that this sale was valid under the Indian law and vested title to the property in question in the purchasers, authorities to the contrary will be cited.

An extract from Freeman on Executions, Art. 300, with the authorities given by him, is deemed sufficient for this purpose. He says: "The officer is not authorized to sell on credit; nor has he any authority to accept payment otherwise than in cash. Nagler vs. Stewart, 10 S. & R. 207, Isler vs. Andrews, 66 N. C. 552, Robbinsvs. Bellas, 2 Watts. 359. * * * The purchaser who has not compiled nor offered to comply with his bid has acquired no interest in nor right to the property sold and can maintain no action or proceeding in regard thereto. The People vs. Hayes, 5 Cal. 66, Hardesty vs. Wilson, 2 Gil 181, Davis vs. Prvor, 6 S. & W. 114, Williams vs. Smith, 6 Cal. 91, Askew vs. Ebberts, 22 Cal. 263, Leach vs. Koening, 55 Mo. 451."

The plaintiff Ansley not merely has not complied with his bid, he in fact has never made a bid. He not only has not paid cash as required by the Choctaw statute, but he is under no obligation to pay cash. His position is, "if this court will give me property which I state in my complaint to be worth $60,000 and which cost $85,000, I will pay the Choctaw Nation $270, otherwise I will pay it nothing." Such a proposition it is believed was never before seriously urged in any court.

Appellant's action finds no foundation in law, equity or honesty.

It is obviously a speculative venture, whereby without the payment of one dollar and without being bound to pay a single dollar unless he succeeds, appellant seeks to obtain property worth from fifty thousand to a hundred thousand dollars.

We beg, in conclusion, to call the attention of this court, to the opinion of the United States Court of Appeals in the Indian Territory, and to the opinion of the United States Circuit Court of Appeals for the Eighth Circuit, in this case; and to the opinion of the Commissioner of Indian Affairs, representing the Interior Department, in this matter: all of which sustain the contention of the appellees herein, and deny the appellant any rights in the premises.

We direct the attention of this honorable court especially to the opinion of the Interior Department, above referred to, because it reviews the history of the whole controversy. In contest cases Nos. 1401, 1404, 1405, pending before the Commissioner of Indian Affairs, we beg to quote as follows from the decision of the Commissioner, and make same a part of this brief:

"* * * * The contestees claim ownership of the property in controversy by reason of purchase from J. W. McLoud, trustee, representing the Choctaw Coal and Railway Company. On December 13, 1895, the contestant herein filed a suit in equity in the United States Court at South McAlester, praying that his title to the property herein be quieted, setting forth his purchase for a valuable consideration at the sheriff's forfeiture sale.

"On May 28, 1902, judgment was rendered by the court in favor of the contestee, and thereupon the contestant appealed to the United

States Court of Appeals for the Indian Territory. In October, 1904, the appellate court confirmed the judgment of the lower court. The case was thereafter appealed to the United States Court for the Eighth Circuit. The decree of the lower court was again affirmed in a decision rendered May 23, 1905, (Walker vs. McLoud, 138 Fed. Rep. 394), and in passing on the rights acquired under sheriff's sale, the court uses the following language:

'Several objections are made to the plaintiff's title or right of recovery. But one of them will be considered.

The act of the Choctaw Legislature under which the plaintiff claims did not purport to transfer the title or right to improvements made or bought by a non-citizen, except upon a sale by the sheriff 'to the highest Choctaw citizen bidder for cash.' An officer making a sale under such a statute must yield obedience to its directions. He cannot sell upon credit or accept any other than an unconditional cash bid. So, also, a purchaser whose bid is made and accepted in disregard of the directions of the statute, or who does not pay the purchase price, acquires no interest in or right to the property.

The sale under which the plaintiff claims was so obviously and so grossly in violation of the directions of the statute that it was and is of no effect.

"The contestants in their appeal contend that the present case differs from the case of Walker vs. McLoud, supra, in that the Choctaw Nation is a party thereto whereas it was not a party in that case, and its rights were therefore not considered. It is urged that the Nation, through its chief, signifies its assent to the sheriff's sale; that the sale was made in accordance with the usages and

customs of the nation, and the construction of the law under which it was made, and that forfeiture having taken place by virtue of the statute itself, no one but the nation can raise the question as to the regularity of the sale.

"It is further contended that if this office should find the sale to be invalid, then it is its duty to schedule the property to the nation by reason of the title acquired thereto by virtue of the forfeiture.

"It is a familiar rule of law that when a person seeks to establish a right under and by virtue of a statutory enactment he must abide by the terms thereof. It is equally well established that sales made in pursuance of statutes providing for the involuntary alienation of property must be made strictly in accordance with the provisions of the law, otherwise the sale is void and no interest is acquired by the purchaser. The statute under which the sale in this case was made is clear and specific as to the manner in which payment is to be made, and the sale in this respect is plainly a gross violation of the express terms of the law, under which Ansley seeks to establish his rights. He therefore acquired no right in and to the property in controversy.

"Without passing on the authority of the chief of the Nation, by becoming a party to this contest, to make valid a sale which, according to the terms of the law authorizing it, is clearly invalid, the question of the rights of the nation herein will be next considered.

"The court of Appeals of the Indian Territory, in its decision in the case of Walker vs. McLoud, since affirmed as above mentioned,

in passing on the question of forfeiture to the Choctaw Nation of the property in question, after quoting section 7 of the Treaty of 1855, and Article 43 of the Treaty of 1866, relating to the rights of the nation to pass laws respecting non-citizens, says:

It thus appears that certain classes of non-citizens were allowed to come in the Choctaw Nation, but in no provision of any treaty that our attention has been called to is there any authority given to these tribal governments to enact any legislation that shall affect or control non-citizens or their property. Is not this absolutely essential before any validity can be given to the act of the Choctaw Council?

Without express authority by treaty or some act of Congress, empowering the Choctaw Council to enact any such legislation pertaining to citizens of the United States and their property, we are of the opinion that said act of forfeiture is without validity.

"It therefore seems to be well established that this particular property has never been legally disposed of by the Nation, and that no forfeiture to the nation has ever taken place."

Wherefore appellees pray that the judgment of the lower court be affirmed.

JOHN W. McLOUD,
CHARLES B. STUART,
Attorneys for Appellees.

Supreme Court of the United States.

No. 140.—October Term, 1906.

W. A. Walker, Executor of the estate of W. H. Ansley, deceased, Appellant,
vs.
J. W. McLoud, Trustee, and Francis I. Gowen, Receiver of The Choctaw Coal and Railway Company.

Appeal from the United States Circuit Court of Appeals for the Eighth Circuit.

[February 4, 1907.]

The appellant, who was plaintiff below, appeals from the judgment of the Circuit Court of Appeals, (138 Fed. 394,) affirming a decree of the United States Court for the Central District of Indian Territory, dismissing the appellant's bill on the merits. (82 S. W. 908.)

The appellant describes this action "as in the nature of ejectment on the equity docket, instituted for the purpose of securing possession of certain buildings and the right to the occupancy of the land on which they were erected, and to quiet plaintiff in his title and possession of the same and to remove the cloud from the title." The appellant is the executor of the will of W. H. Ansley, who was the purchaser of the buildings, hereinafter referred to, at the sheriff's sale.

The facts necessary to state in considering the question decided are as follows: The defendant McLoud is a trustee under a deed of trust, which need not now be more particularly stated, and defendant Gowen is the receiver of the Choctaw Coal and Railway Company, which was a corporation created under the laws of the State of Minnesota. By the second section of the act of Congress of February 18, 1888 (25 Stat. 35) it was granted the right to take and use for all purposes of a railway, but for no other purposes, a right of way one hundred feet in width through the Indian Territory for its main line and branch. The tenth section of the act provided that the company should accept this right of way upon the express condition that it would neither aid, advise nor assist in any effort looking towards the changing or extinguishing of the present tenure of the Indians in their land, and would not attempt to secure from the Indian nations any further grant of land or its occupancy than was provided in the act; and that any violation of the condition mentioned should operate as a forfeiture of all the rights and privileges of the company under the act.

The Choctaw Nation on October 30, 1888, passed an act, the first section of which reads as follows:

"All non-citizens not in the employ of a citizen of the Choctaw Nation and not authorized to live in the Choctaw Nation under the provisions of existing treaty stipulations, who have made or bought improvements in said nation, are hereby notified that they are allowed to sell their so-called improvements to citizens, and if such non-citizens fail to comply with this section, then it shall be the duty of the sheriffs of the counties in which such improvements may be located to advertise the same for sale in thirty days; and sell the same at the appointed time to the highest Choctaw citizen bidder for cash; one-half of which shall be paid into their respective treasuries, and the other half into the national treasury. Provided, however, that if any such non-citizen fail or refuse to deliver the possession of such an improvement he shall be reported by the sheriff of that county to the principal chief, and by said chief to the United States Indian agent, to take proper steps for the removal and prosecution of such offender under section 2118 of the Revised Statutes of the United States. Provided, further, that a notice of sale shall be posted by the sheriff in three public places in his county, which shall be legal notice to all persons against whom this law may operate."

While the above acts were in force and during the years from 1889 to 1893, both inclusive, it is charged that the company, through its officers and agents, built certain buildings at the town of South McAlester, I. T., outside and beyond its right of way, illegally and in violation of such acts, and were using the same in behalf and in the interest of the company.

In 1895 William Ansley, who was a citizen of the Choctaw Nation, and a deputy sheriff of the county where the buildings were erected, wrote to the governor of the Choctaw Nation and subsequently made a report in regard to the buildings as being erected by the company outside of its right of way, and that they were controlled by the company, and he was then directed by the principal chief of the Choctaw Nation to proceed according to law to sell and dispose of the buildings which had been built by the company outside its right of way. The sheriff proceeded to advertise the buildings for sale according to law, and in June, 1895, sold some of them to the appellant's intestate for $270; and the sheriff accepted his note as payment, conditioned that the same should be paid as soon as the purchaser was put into or otherwise obtained possession. This note has never been paid. The property purchased was, as alleged, of the value of about $60,000, and the purchaser was the son of the deputy sheriff who made the sale. The reason the money was not paid at the time of the bid, as stated by the bidder Ansley, was that the property was held by the company and he was informed that it would take litigation to obtain possession. Immediately after the sale the sheriff who made it reported his action to the Chief of the Choctaw Nation.

The appellant upon the trial offered in evidence the deposition of the deputy sheriff, who made the sale, in relation to this matter, in which he swore that "the Chief ratified my action as to the sale and payments of

said property, and instructed me to proceed at once and employ attorneys to assist me in getting possession of the property for the purchasers, and I at once employed attorneys to assist the plaintiff, W. H. Ansley, in obtaining possessing of the property sold by me as sheriff. Mosely & Smith, of Denison, Texas, a firm of lawyers, and Cole & Redwine, attorneys at South McAlester, were employed by the Chief of the Choctaw Nation to assist the plaintiff in obtaining possession of said property. In 1895 the Choctaw Council passed a special act, appropriating $1,500 to employ attorneys to represent the Choctaw Nation and to assist the plaintiff in obtaining possession of the property aforesaid. In the December following contracts employing the aforesaid lawyers were signed by Jeff Gardner, Chief of the Choctaw Nation, and all my acts as deputy sheriff aforesaid as to the sale and payments of the purchase price of the aforesaid property were accepted and ratified by the Choctaw Nation."

All that portion of the deposition above quoted was objected to on the part of the defendant, and the objection was sustained, and that portion was stricken out under the exception of appellant.

The appellant also put in evidence the act of the General Council of the Choctaw Nation, entitled "An act authorizing the principal chief to employ counsel," approved October 30, 1895, the first section of which reads as follows:

"SECTION 1. Be it enacted by the General Council of the Choctaw Nation assembled: That the sum of two thousand dollars ($2,000.00) is hereby appropriated out of any money in the National Treasury not otherwise appropriated, and said sum to be placed to the credit of the principal chief, and to be by him used for and in behalf of the Choctaw Nation, in the employing of able and competent counsel to defend the interest of this nation in all suits now pending or that may hereafter come before the United States courts in any manner relative to the full and complete execution of the laws of the Choctaw Nation by the sheriffs of each and every county in the confiscation of property of non-citizens who are now occupying lands or buildings, or who may hereafter occupy, not in conformity to the laws of the Choctaw Nation."

Mr. Justice PECKHAM, after making the foregoing statement, delivered the opinion of the Court.

The Circuit Court of Appeals decided but one question in this case, and that one related to the validity of the sale of the property by the sheriff on credit instead of for cash. In our opinion that question was rightly decided by the court when it held such sale absolutely void, and it is unnecessary for us to refer to or decide any other.

The son of the deputy sheriff, who conducted the sale, bid off property worth $60,000 for $270, and gave his note for that amount, payable when

possession was given him, or he, by some means, had otherwise obtained it. He has not yet obtained it, and the note has never been paid.

The Court of Appeals held the sale void, as in violation of the statute under which the sheriff assumed to sell. The proceedings of the sheriff were under the act of the Choctaw legislature, approved October 30, 1888, referred to in the foregoing statement. By that act it was provided that the sheriffs of the counties in which the improvements were located should advertise the improvements for sale for thirty days, and should "sell the same at the appointed time to the highest Choctaw citizen bidder for cash."

The sale was a clear violation of the provisions of the statute, under which alone there was authority to sell at all.

The appellant answers this objection by stating that the parties consented to the sale for credit instead of cash. We find no evidence of such consent, so far as the coal company was concerned or its receivers. The buildings were, as alleged by appellant, erected by the company or its receivers, although outside the right of way, and, therefore, as is claimed by appellant, they became forfeited to the Choctaw Nation. It is unnecessary to decide this question at present. But if the property were to be taken away from the company or its receivers, on the ground of the alleged forfeiture, they certainly had the right to demand that it should be taken from them pursuant to law, and not in open violation thereof. When a party, whose only title to property depends upon its sale to him under a statute, demands possession of such property from one who is in possession under a *bona fide* claim of right, the party making such demand must show some right to it, and this obligation he does not meet, by showing that he purchased it under a sale, which was in plain violation of the very statute under which the sale took place. (*Hackett* v. *Alston*, 110 Fed. 910.) The coal company or the receivers, therefore, had great interest in this property, as owners, until, at least, their title was divested upon a valid sale. They never consented to any sale on credit.

The appellant asserts that the railroad or the receivers had forfeited the property by building outside the right of way, and hence they had no right to be heard as to the manner of sale, whether in violation of the statute or not. But, assuming the validity and applicability of the Indian statute, the title to the property did not become forfeited by the mere act of building. There must be at least some valid action looking towards the enforcement of the forfeiture. To assert that those who are in possession are intruders upon the land and have forfeited their property, and therefore are not entitled to be heard upon the question whether those who claim the property have complied with the law, is to say that one in possession and claiming to be the owner may be deprived of his property without due process of law. On the contrary, he is entitled to insist upon obedience

to law by those who assume to take his property by reason of an alleged forfeiture. To insist upon a forfeiture the person who claims it must show some legal right to insist upon it. In case of a sovereign State or nation, its conclusion to insist upon a forfeiture for breach of a condition subsequent may be by legislation, (*At. & Pac. R. R. Co.* v. *Mingus*, 165 U. S. 413, 431,) and that legislation must be followed in asserting and enforcing the forfeiture by those acting for the State. So the owners of this property, even if it be liable to forfeiture, may nevertheless insist upon obedience to the statute by those assuming to act under it. Their consent to its violation is most essential. They did not become outlaws by building outside of the right of way.

It is also urged on the part of the appellant that the act of the sheriff was ratified both by the principal chief and also by the Council of the nation. The only proof of the ratification by the principal chief (even if he had power to ratify, which can not be assumed) is given in the deposition of the appellant's intestate, referred to in the foregoing statement of facts. Therein the sheriff said that the chief ratified his action as to the sale and payments on the property, and instructed him to proceed at once to employ attorneys to assist him in getting possession of the property for the purchaser. The statement that the chief ratified his action was a mere conclusion of law. It gave no facts upon which such alleged ratification was based, and was clearly inadmissible as proof of ratification. The same witness had already testified that before the sale he was directed by the Chief of the Choctaw Nation "to proceed according to law to dispose of the buildings which had been built by the Choctaw Coal and Railway Company off of its right of way." It would hardly be supposed that he would at once ratify a violation of law in the conduct of the sale. But the proof of ratification by the principal chief is totally insufficient and is, as already said, a mere conclusion of law by the witness. And, as a separate and distinct reason, we find no proof of any power of the chief to ratify a violation of this act.

Nor is the alleged ratification by the General Council of the Choctaw Nation of any greater effect. This ratification consists in the passage by the General Council of the act approved October 30, 1895, and already referred to. It appropriates the sum of $2,000, to be used by the principal chief in the employment of counsel for the purpose of defending the interest of the nation in all suits pending or that may thereafter come before the United States courts, "in any manner relative to the full and complete execution of the laws of the Choctaw Nation by the sheriffs of each and every county in the confiscation of property of non-citizens who are now occupying lands or buildings or who may hereafter occupy, not in conformity with the laws of the Choctaw Nation."

Certainly there is nothing in that act which in any way ratifies or purports to ratify an illegal sale by a sheriff assuming to act under the law providing for sales by sheriffs of buildings erected on land outside the right of way of the railroad company. It appropriates money to defend the nation in suits relative to the full and complete execution of the laws and nothing else; not a suspicion of any ratification of an illegal sale under those laws.

The record shows a gross violation of the act under which the sale was made, and an entire absence of any evidence showing a ratification of such act either by the principal chief, assuming he could ratify, or by the council of the nation. The case is not one in which any court would strive to find a way to uphold such a proceeding.

Without going into the other questions which arise, it is sufficient to say that upon the ground above discussed the decree of the Circuit Court of Appeals is right.

Decree affirmed.

True copy.

Test:

Clerk Supreme Court U. S.